JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History. — *Freeman*

VIII

NORMAN CONSTABLES
IN
AMERICA

Read before the New England Historic Genealogical Society, January 4, 1882

BY HERBERT B. ADAMS

XUM

PROSPECTUS
OF THE
Johns Hopkins University Studies
IN
HISTORICAL AND POLITICAL SCIENCE.

H. B. ADAMS, Editor.

The following Studies are either ready for the press or in active preparation. Some of them will be published in the first instance by the University. Others will be reprints from the proceedings of learned societies, magazines, etc., where they appear in some cases under titles slightly different from those here adopted. The idea of this series is to bring together, in numbered monographs, kindred contributions to Historical and Political Science, so that individual efforts may gain strength by combination and become more useful as well as more accessible to students. The Studies will be published at monthly intervals, but not necessarily in separate form or in the following order. A limited edition only of each monographic number will be issued and a price will be set upon each as soon as it appears. A few single copies will be sold upon application and receipt of price. By paying $3.00 in advance, subscribers may avoid the inconvenience of small remittances and be assured of receiving, at lower rates, the first twelve numbers, comprising more than twelve papers and about 400 pages. A title-page and table of contents will be furnished upon completion of the First Series.

Scientific communications should be addressed to the EDITOR; *business matters, subscriptions, questions touching exchanges, etc., to the* PUBLICATION AGENCY (N. MURRAY), JOHNS HOPKINS UNIVERSITY, BALTIMORE, MARYLAND.

Subscriptions will also be received, or single copies furnished, by G. P. PUTNAM'S SONS, LONDON (18 Henrietta St., Covent Garden) AND NEW YORK; PORTER & COATES, PHILADELPHIA; CUPPLES, UPHAM & Co., (successors of A. Williams & Co.), BOSTON; SOULE & BUGBEE, BOSTON; ROBERT CLARKE & Co., CINCINNATI; JANSEN, McCLURG & Co., CHICAGO; JAMES ANGLIM & Co., WASHINGTON; TRÜBNER & Co., LONDON; KARL J. TRÜBNER, STRASSBURG; PUTTKAMMER & MÜHLBRECHT, BERLIN.

I. **An Introduction to American Institutional History.** By EDWARD A. FREEMAN, D.C.L., LL.D. With an account of Mr. Freeman's Visit to Baltimore, by the Editor, republished from the Johns Hopkins University Circular, No. 20. (Now ready. Price, 25 cents).

II. **The Germanic Origin of New England Towns.** Read before the Harvard Historical Society, May 9, 1881. By H. B. ADAMS, Ph. D. Heidelberg, 1876; Associate Professor of History, Johns Hopkins University. With Notes on Cooperation in University Work. (Now ready. Price, 40 cents).

III. **Local Government in Illinois.** Reprinted from the Fortnightly Review. By ALBERT SHAW, A. B. Iowa College, 1879; Johns Hopkins University, 1881–2: and **Local Government in Pennsylvania.** Read before the Pennsylvania Historical Society, May 1, 1882. By E. R. L. GOULD, A. B. Victoria University, 1881; Fellow in History, Johns Hopkins University, 1882. (Now ready. Price 30 cents.)

VIII

NORMAN CONSTABLES IN AMERICA

(*Enter* Dogberry, Verges, and Sexton, in gowns; and the Watch, with Conrade and Borachio).

Dog. Is our whole dissembly appeared?

Verg. O, a stool and a cushion for the sexton. . . . .

Sex. But which are the offenders that are to be examined? Let them come before master constable.

Dog. Yea, marry, let them come before me. . . . I am a wise fellow; and, which is more, an officer; and, which is more, a householder; and, which is more, as pretty a piece of flesh as any in Messina; and one that knows the law, go to; and a rich fellow enough, go to; and a fellow that hath had losses; and one that hath two gowns, and everything handsome about him.—*Shakespeare.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History. — *Freeman*

VIII

NORMAN CONSTABLES
IN
AMERICA

Read before the New England Historic, Genealogical Society, February 1, 1882

By HERBERT B. ADAMS, PH. D.

BALTIMORE
PUBLISHED BY THE JOHNS HOPKINS UNIVERSITY
JUNE, 1883.

JOHN MURPHY & CO., PRINTERS,
BALTIMORE.

CONSTABLES.

XUM

[Reprinted from the N. E. Historical and Genealogical Register for April, 1882.]

CONSTABLES.*

By Herbert B. Adams.

IN the library of the Massachusetts Historical Society there is a small black letter volume, bearing the imprint of London, 1614, and entitled "The Dvties of Constables, Borsholders, Tythingmen, and such other lowe and lay Ministers of the Peace—by William Lambard of Lincolnes Inne, Gent." By the same author and in the same library there is another work imprinted in London, 1596, and entitled "A Perambulation of Kent: Conteining the Description, Hystories, and Customes of that Shyre," written originally in the year 1570 and first published in 1576. The latter work bears upon the reverse of the fly-leaf the name of Adam Winthrop, and upon the reverse of the title-page a Latin ode by Winthrop in praise of Lambard.† Scattered through the work are many annotations and curious scraps of writing in Winthrop's hand. This very book was brought to America by the first governor of Massachusetts, who was well read in the laws of England, like his father and like his scholarly descendant, the Hon. Robert C. Winthrop, who presented the above volume to the Historical Society, of which for many years he has been the honored president.‡ Through John Winthrop it is

* This paper was read before the New England Historic, Genealogical Society, Feb. 1, 1882.

† Adam Winthrop speaks of Lambard as a "student of the common Lawes—barrister—wise, learned and religious, as appereth by this booke." A few years ago, from a kind of inherited family interest in Lambard, the Hon. Robert C. Winthrop, when visiting Seven Oaks, County Kent, noted the existence of a monument to "the old perambulator of Kent, and 'the father of County Historians.'" (See Proceedings of the Massachusetts Historical Society, 1875-6, 197.) Lambard died at Greenwich near the seat of that ancient feudal manor, so famous in English colonial charters, which describe how lands are to be held of his Majesty, "as of his manor of East Greenwich in the County of Kent in free and Common Soccage and not in Capite nor by Knightes service." (See Plymouth Laws, 75. Compare with Records of Massachusetts, i. 4.) In the *Nouvelle Biographie Générale* there is an account of Lambard, based upon Nichol's *Life of Lambarde* and Bridgman's *Legal Bibliography*. From this account it appears that our author was born in London in 1536, and died, Aug. 19, 1601. He was a justice of the peace in the county of Kent, 1579, and, by reason of his special knowledge of legal antiquities, finally became Master of the Rolls, or keeper of the archives of England, through the favor of Queen Elizabeth. He compiled various learned works, some of which we have found in Baltimore: a collection of Saxon laws entitled Archaionomia, sive de priscis Anglorum legibus libri (Peabody Libr.); Eirenarcha, or Duties of Justices of the Peace (Mass. Hist. Soc.); Pandecta Rotulorum; Archeion (or High Courts of Justice in England, to be found in the Md. Episcopal Libr.); Perambulation of Kent. The latter work is the corner stone of the local history of England. Lambard was collecting materials for the upbuilding of this work when he heard that Camden was engaged upon the same great task. Lambard discontinued his own researches, but they were afterward (1730) published as a Dictionarium Angliæ Topographicum et Historicum, which is a truly monumental treatise, although incomplete. Lambard deserves great reverence, for he was the founder of the modern science of local history which has grown to such grand proportions in English Town and County Histories, and in Winsor's Memorial History of Boston. Local history is the best foundation for national history. Mr. Edward A. Freeman, in an address to the Somersetshire Archæological and Natural History Society (Proceedings, 1880, vol. xxvi.), said "the proper way of studying local history" was "as a contribution to general history."

‡ The Hon. Robert C. Winthrop, in the first volume of the Life and Letters of John Winthrop, 41-3, describes this valuable work with particular reference to the manuscript notes by his ancestor. A copy of this book was brought over to this country by one of the

not improbable that the influence of William Lambard crept into the early local legislation of Massachusetts. At all events, this latter treatise which describes the freest of English Counties or the customs of Kent, whence the freehold land tenure of almost every English colony in America was derived, and the former essay on Constables, which describes the parish institutions of the mother country at the time the Puritans came over, are both historical monuments deserving not only watchful guardianship, but scientific attention.

The writings of William Lambard represent the most advanced state of English knowledge in the sixteenth century concerning the origin of municipal institutions. The work contains many errors and numerous incorrect etymologies, but these are faults of the time rather than of the man. Practically Lambard was the transmitter if not one of the fathers of English Institutional History. After him, in the reign of James I., came Lords Bacon and Coke and the now forgotten Dr. Cowell, commenting on the laws and Institutes of England, as handed down by Granville, Bracton, Britton, Fleta, Fortescue, Littleton and others. In the reign of Charles II. appeared Sir Matthew Hale, with the first regular History of the Common Law. For a century after Hale there was no really monumental treatise on English institutions, with the exception perhaps of Spelman's works and Dr. Wood's Institutes, until the year of the American Stamp Act (1765) when Blackstone's Commentaries were first published. Like all his predecessors, Blackstone was practically and necessarily a compiler. Whatever he had to say regarding the municipal institutions of England, concerning Constables, Tithingmen and Justices of the Peace, he extracted from older writers like Dr. Burns and William Lambard. Thus our monumental author of the sixteenth century has been built into the very foundations of English Institutional History. Since Blackstone there has been reared upon the basis of his work and that of his predecessors, a History of English Law by Reeves, the publication of whose treatise began the year American independence was acknowledged by Great Britain (1783). During the present century, the Institutional History of England has been greatly advanced by the writings of Palgrave, Kemble, Thorpe, Sir Henry Maine, Stubbs and Freeman, all of whom owe much of their inspiration to the historical science of Germany. From impulses proceeding from German scholars and from the new school of English historians, have sprung the recent American studies in historical jurisprudence, the essays in Anglo-Saxon Law by Henry Adams, Henry Cabot Lodge, Ernest Young and J. Laurence Laughlin, the Placita Anglo-Normannica, by Melville M. Bigelow, and the recent lectures by O. W. Holmes, Jr., on The Common Law.

early settlers of Patuxet (Plymouth), who appears to have removed to Rhode Island. This copy, through the courtesy of Mr. Winsor, was borrowed by the writer of this paper from the Library of Harvard College, and led to the discovery in Baltimore by Mr. Albert S. Cook of a third copy of the self-same edition (1596), which through the generosity of Mr. Cook is now in our possession.

Along this line of march, over old roads into new fields, American Institutional History will one day advance. It is the purpose of a little company of graduate students at the Johns Hopkins University to reconnoitre the ground.* They are now studying upon coöperative and, to some extent, upon representative principles, the local institutions of their respective states or sections of country. A few students represent Maryland; others Virginia, the Carolinas, Kentucky, Delaware, Pennsylvania, New Jersey and New York. One man has entered the field of Ohio; others, that of Michigan and the Northwest, where English institutions were planted upon French soil. A student from Canada will investigate the Anglo-French institutions of his Province. The writer of this monograph is studying the origin of the town institutions of New England, and presents the following research upon Constables as a contribution to the main subject.

The importance of the Petty Constable as a connecting link between New England Towns and Old English Parishes has never yet been recognized. To trace the origin and development of the constabulary office and to show its exact process of transition from the old country to the new is the object of this paper. Besides Lambard and the old time authorities, we have utilized the resources of modern historical science, the Statutes of the Realm and of the English Colonies, together with certain hitherto unpublished manuscripts brought over to New England by Jonas Humphrey, who settled in the parish-town of Dorchester, Massachusetts. According to the traditions of his family, he was a constable in Wendover, County Bucks, in England. An official warrant and a list of constabulary duties, preserved by this faithful officer, are the best possible sources of information as to the character of the constable's office at the time of the Puritan migration.

We are indebted for copies of the above-mentioned documents to the eminent antiquary of Dorchester, who lately prepared for publication the Suffolk Deeds (Boston, 1880), Mr. William B. Trask, a descendant of Capt. William Trask, one of the old planters of Salem. While utilizing in the body of this monograph many facts derived from the Humphrey manuscripts, we shall append the same in full, as they are likely to prove an interesting contribution to the history of our local institutions. Mr. Trask's letter, giving a brief account of Jonas Humphrey and of the manuscripts themselves, will constitute the best preface to their separate perusal. These documents will clearly show that the duties of constable were not only more honorable, but also far better understood in Humphrey's day than in the time of Blackstone.

The latter, in his very inadequate account of constables, says:

* Richard Frothingham, in his work on the Rise of the Republic of the United States, 26, says, "I have not met with a volume, or even an essay, on the growth of the municipal system in the United States."

"Considering what manner of men are for the most part put into these offices, it is perhaps very well that they are generally kept in ignorance" of the extent of their powers.* This observation, which has been quoted over and over again, as though it were an infallible precept of the Common Law, and which even finds honorable mention in the last edition of the Encyclopædia Britannica, in the article on "Constables," may perhaps account in some measure for the general disrepute and comparative obscurity into which this ancient office, once dignified and well known, has now fallen. Time was when the best men of an English parish held in rotation the office of Parish Constable. No one was permitted to decline the responsibility of village headship, except women, who were allowed to furnish substitutes. In an old book entitled "English Liberties," published in London, 1719, it is said, "The Petty Constable is chosen by the people of the Parish. . . . The Petty Constables ought to be honest and able Men both in Body and Estate, and not of the meaner Sort; and therefore it hath been held that they ought not to be chosen by the House or Custom, if not fit to execute the Office. But 'tis now ruled, That a Custom for the Inhabitants to serve by Turns is good; so if it happen on a Woman she must provide one to serve the Office."†

In attempting to reconstruct the historical idea of the office of constable, we cannot rely with any degree of confidence on Blackstone, for the constabulary office had evidently begun to degenerate even in his day; and, as we have already implied, the learned judge himself, in his enumeration of constabulary duties, merely quoted from older writers like Lambard, who were better informed. Neither can we rely implicitly upon Lambard or Lord Coke, for both of these early authorities fail to explain even the origin of the constable's name. Coke in his Institutes, following Lambard, says, "Constable or cunstable is compounded of the Saxon words cuninge per contractionem kinge, and stable, id est columen, quasi columen regis, anciently written cuningstable."‡ In other words, Lord Coke seriously maintains that the Constable, etymologically considered, is the support or mainstay of the King. Such an unwarrantable derivation of the name constable represents the fantastic, unscientific philology of the sixteenth century, inherited from the mediæval monks, who explained the origin of words with even more originality than did Horne Tooke or Noah Webster.

As a matter of fact, the term constable was introduced into England through the Norman-French Connétable, old French Conestable or Cunestable. The word is derived from the Low Latin Con-

* Blackstone's Commentaries on the Laws of England (Judge Cooley's ed.), i. 355.

† English Liberties or the Free-born Subject's Inheritance, containing Magna Charta, Charta de Foresta, &c. Lastly, of Justices of the Peace, Coronors, Constables, Churchwardens, Overseers of the Poor, Surveyors of the Highways, &c. Compiled first by Henry Care . . . In the Savoy, 1719.

‡ Coke, Institutes, Part iv. cap. xvii.

stabulus (*comes stabuli*, or count of the stable). It is a word common to all the Romance languages, although in somewhat varying forms. It appears in the Provençal, in Italian, in Spanish and in Portuguese. Both the Latin and the French forms were early imported into England. In Magna Carta we have *Constabularius*. In the Rolls of Parliament frequently occurs the form *Conestable*. The institution itself, as understood by the Normans and the peoples of Southern Europe, was akin to the Byzantine *comes stabuli* and the classic Master-of-Horse. Undoubtedly the office had its origin in menial service in connection with the royal stable. Primarily a constable was a hostler. The constabulary office belongs to a nexus of court institutions, like those of chamberlain, cupbearer and steward, which are of immemorial antiquity and common to both Aryan and Shemitic monarchies.

We shall discuss the whole subject of the institutions of the Royal Household in a special paper on the Origin of the Modern Ministerial System, but, in this connection, would merely remark that the name constable suggests a certain Byzantine influence surviving in the office itself, as the name of Cæsar survives in the Russian Czar,* and the German Kaiser, or as the idea of the classic Imperator survives in modern emperors. Undoubtedly at a very early date Teutonic kings and dukes had their ministerial officers, their hostlers of high degree. The Franks had their Marschalk (from Mar, a horse, and Schalk, a knave or servant), an institution surviving in France to this day, in two forms, (1) Maréchal de France, (2) Maréchal ferrant, or shoer of horses. The Lombard kings and dukes had their Marpahis. The Saxons had their Horsethegn or Staller. Of necessity such offices would exist in the equine establishment of every Teutonic chieftain. It is highly probable that an old Germanic institution was baptized by a Latin name, Constabulus, just as a German military leader becomes a dux or duke. Classic titles, Byzantine trappings and court usages were introduced into the royal households of almost every Teutonic king or count; but while thus clothed upon with a Latin name and oriental dignity, mediæval constables owe their historic origin to menial service. In the South German town of Heidelberg there stands in a good state of preservation an ancient feudal stable, built of old red sand-stone, and known as the *Marstall*. It is now used as a riding-school for University students; but it is a good surviving type of the original horse-stalls whence the Marshals of Saxony and of France, the Earl Marshals and Lord High Constables of England, rode forth to glory and honor.

* The notion that the word Czar was a corruption of Cæsar, was formerly unquestioned, but Creasy, in his Platform of International Law, 126, and in his History of the Ottoman Turks, i. 341, says it is an Oriental, possibly a Tartar word, meaning sovereign ruler. He thinks the Russians acquired it through the Sclavonic translation of the Bible. But Mr. Edward A. Freeman, in his recent lectures before the students of the Johns Hopkins University, on the Historical Geography of South-Eastern Europe, came to the rescue of the old etymology, saying that he had been assured by a Slavonic friend of undoubted authority, that the old derivation is the correct one.

The office of the Lord High Constable (*Constabularius totius Angliæ*) came into prominence as an hereditary office in the person of Miles of Gloucester in the reign of Stephen (1135–1154), although probably long before this constables had existed in every royal town and castle, in every earldom and upon every great manorial estate. Of course the office diminished in dignity the nearer it approached the common people. Among the subject Saxons existed a lowly office known by various names, as Tithingman, Borhs-Ealdor, Elder of the Pledge, Head-Borough, or Borough-Reeve, upon whom the shadow of the Norman name of constable was soon to fall, as the *umbra nominis Romani* had fallen upon many old Teutonic institutions. We cannot dwell at length in this connection upon the office of the Lord High Constable; suffice it to say, he was the representative of the King in all matters pertaining to armies and castles. He provided for all the King's horses and all the King's men. He mustered the royal forces and saw to it that every vassal sent his proper quota of armed men and horse. If an expedition was to be undertaken into foreign parts, the Lord High Constable provided means of transportation and served as kind of Inspector-General. He, in conjunction with the Earl Marshal, took cognizance of all offences committed during the foreign campaign, and decided all questions relating to the disposition of prisoners and booty. From the exercise of such functions arose Courts Martial and Martial Law.

According to Lambard and Blackstone the lower constabulary office was drawn from that of the Lord High Constable, "as it were a very finger from that hand." Blackstone differentiates the lower office into the High Constable of the Hundred and the Petty Constable of the town or parish. On the authority of Spelman, he says Petty Constables were "first instituted about the reign of Edward III.* We have looked through the statutes belonging to this reign and fail to find any sufficient ground for the above statement. It is at best rather a loose way of describing the origin of an institution to refer it to "*about* the reign" of a King who reigned for fifty years (1327–77). As to the origin of High Constables, Blackstone is more precise. He ascribes this institution to the Statute of Winchester, 13 Edward I. (1285), when it was enacted that "in every hundred and franchise two constables shall be chosen to make the view of armour."† Although Blackstone and all the host who follow him are wrong on this point also, for the Constable of the Hundred is much older than the Statute of Winchester, yet in this connection it is interesting to observe that the latter office appears to be intimately related to the militia system of which the Lord High Constable was the administrative head. By the Statute of Winchester, every man in England was to "have in his house harness for to keep the

* Blackstone, 355. Compare Lambard.
† Stubbs, Select Charters, 474.

peace." All men from fifteen to sixty years of age were to possess arms and armor according to their estate, the highest requirements being "an hauberke, an helme of iron, a sword, a knife, and a horse;" and the lowest, simply a bow and arrows. The Constables were to make a "view of armour" twice a year, and report all delinquents to some justice of the peace, who in turn reported them to the King in Parliament. This mode of procedure has its exact counterpart in the presentment of delinquents in arms and armor before the Plymouth and Massachusetts General Courts.

Other curious parallels between constables of old England in the thirteenth and of New England in the seventeenth centuries are the requirements in the Statute of Winchester that the above local officers shall report defaults in the highways, in watch and ward, and in bringing matters to justice; but the following is especially noteworthy: Constables "shall present all such as do lodge strangers in uplandish towns for whom they will not answer." The records of Plymouth and Massachusetts colonies are full of such enactments; for example in Massachusetts it was ordered "that the cunstables should inform of new comers, if any be admitted without license." It had been enjoined by the General Court that "no towne or person shall receive any stranger" without the allowance of magistrates.* It was ordained by the town of Newbury, Mass., that no one should be admitted as an inhabitant without the consent and approbation of the body of freemen resident in that town.† It has been thought that such restrictions upon new comers were marks of Puritan intolerance. They were simply revivals of old English law.‡ The Statute of Winchester is said by Canon Stubbs to be "a monument of the persistence of primitive institutions working their way through the substratum of feudalism and gaining strength in the process."§

For earlier outcroppings of the institutions of the Constable of the Hundred, and the Constable of the town or parish, we have only to turn back to the Assize of Arms,‖ 36 Henry III. (1252), whereby in every township one or two constables, according to the number of inhabitants, and in every hundred one chief constable (*capitalis constabularius*) were to be appointed. At the summons of the latter all men sworn to arms were to muster from their respective hun-

* Mass. Col. Rec., i. 196, 241.

† Coffin, History of Newbury, 23.

‡ Besides the evidence on this point in the Statute of Winchester, see also the Writ of 1233 for the conservation of the peace (*De forma pacis conservanda*): Item nullus hospitetur aliquem extraneum ultra unam noctem nisi possit invenire plegios de fidelitate et quod nullum damnum eveniet per eum, et respondeat pro eo sicut pro uno de familia sua.—Stubbs, Select Charters, 362.

Compare with the above the following extract from the MS. Town Records of Plymouth, Oct. 29, 1668: "Ordered by the Town, that the Selectmen shall henceforth have power to require any that shall receive any strangers, so as to entertain them into their houses, to give security unto them to save the Town harmless from any damage that may accrue unto them by their entertainment of such as aforesaid." It was likewise agreed that John Evenson be forthwith warned to depart the town with all convenient speed!

§ Stubbs, Select Charters, 470.

‖ Stubbs, Select Charters, 372.

dreds and follow his behests in whatever related to the preservation of the King's peace. Whoever were found under arms and not deputed for the above purpose were to be arrested. If they refused to allow themselves to be arrested, then the constables of the hundreds and of the towns were to levy the Hue and Cry upon the offenders and pursue them from town to town (*de villa in villam*) until they were finally taken. We are here very evidently on the historic track of ancient Saxon customs. We are at once reminded of a law dating back as far as the time of King Edgar (957–975) concerning the pursuit of a thief: "If there be present need, let it be made known to the hundred-man, and let him [make it known] to the tithing-men; and let all go forth to where God may direct them to go: let them do justice on the thief, as it was formerly the enactment of Edmund.—We have also ordained: if the hundred pursue a track into another hundred, that notice be given to the hundredman, and that he then go with them."* There appears to be some connection between the Hundredman of the days of King Edgar and King Edmund (941–946) and the Constable of the Hundred in the days of Henry III. There surely is some relation between the Saxon Tithingman above mentioned and the Norman Petty Constable. Although there is a gap of three hundred years, yet the bridge between these Saxon and Norman institutions is natural and unbroken.

When the Normans made the conquest of Saxon England they found the country self-governed. The whole land was minutely subdivided into so-called Hundreds, or Wapentakes, and Tithings. The origin of these local divisions is of very great antiquity. They root in the military institutions of the ancient Teutons, whereby kindred warriors were mustered by tens and hundreds. The Hundred was the institutional multiple of the Tithing. But in many cases the Hundred was the long Hundred of six score, and it appears that the Tithing was sometimes known as Dozeine (Dizaine–10), for example in the Year Books of Edward III. It seems probable that the Hundred may have frequently contained twelve Tithings, and that there was some connection between these twelve local units and the judicial representation of the Hundred by twelve men, although in the Shiremoot and Hundredmoot the Tithing, Town, or Parish was represented directly by its Reeve, or Constable, and four best men. Undoubtedly both the Tithing and the Hundred were originally personal in their composition. Ten or more warriors made a Tithing, and ten or more Tithings constituted the Hundred, of which possibly a type survives in the militia company of one hundred men, for there is no break between the military institutions of Medviæal and Modern England. When a Teutonic Host, or army, settled down by kith and kin in local precincts bearing the names of families, then

* Thorpe, Ancient Laws and Institutes of England, i. 259, 261.

Tithings and Hundreds gradually became territorial in character, varying in size according to the amount of land occupied. In the more thickly settled parts of England Tithings and Hundreds are much smaller than in the more sparsely settled regions. Naturally with increasing population the numerical divisions would not remain constant. There are cases known where a Tithing contained as many as eighty men. The point was that there must be at least ten heads of families in order to constitute a Tithing, Town, or Parish.

Doubtless for a long period the Saxon Tithings and Hundreds sent their full quota to the muster of the Host, but gradually public demands diminished until finally, in the reign of Edward III., only one man-at-arms, equipped and furnished for sixty days, was required from each parish, although, if occasion demanded, the quota was increased. The requirement was always made of the Reeve and four best men, as representative of the town or parish. It is interesting to note that, down to modern times, English parishes kept each their suit of "town armour," usually in the parish church, for which reason the arms were sometimes called "church armour," or "church harness." In the parish records of Kingston-on-Thames, is an item of thirteen shillings, four pence, paid in 1603 "To James Allison and four others, for carrying the armour at the coronation." Here is perhaps the idea of military representation of the town by Reeve and Four. In the parish records of Fulham, Middlesex, there is the following inventory of parish armor: "Anno 1583. Note of the armour for the parish of Fulham, viz. Fulham side only. First, a corslet, with a pyke, sworde, and daiger, furnished in all points, a gyrdle only excepted. Item, two hargobushes [arquebuses, German *hakenbuechse*, or gun with a hook, or forked rest], with flaskes and towch boxes to the same; two morryons [helmets without visors]; two swords, and two daigers, and two hanglesses unto two swords: which are all for Fulhame side only. All which armore are, and do remayne, in the possession and appointment of John Pulton or Northend, being constable of Fulham-syde the yere above wrytten."

The local institutions of England developed from military germs implanted in the village community system of immemorial antiquity. The above example of town armor in the keeping of the constable is only a historical survival, suggesting the original martial character of the entire community. We must regard the local settlements of our Saxon forefathers as the permanent encampment of a Teutonic Host, by Hundreds and Tithings, or by companies and squads, under the command of Hundredmen and Tithingmen, who mustered their respective quotas from local precincts, and who, in the midst of agrarian pursuits, served as watchful sentinels, ever ready to arouse a peaceful population to arms. With the Saxons the object of wars and forays was to secure a better footing for peace.

When the war or expedition was over, it remained the duty of the Hundredmen and Tithingmen, as local watchmen and police magistrates, to keep the peace. Hence arose the civil functions of officers once purely military. The Saxon system of Watch and Ward, which is the germ of our modern police system, the Courts of the Tithing and of the Hundred, which are germs of the town meetings and General Courts of New England,—these institutions, together with Petty Constables and Justices of the Peace, were all the outgrowths of military beginnings. The ancient Tithingman became the Parish Constable, the keeper of the village peace and of the town armor, whose chief duty, as late as the time of the Tudors, was "to prepare the muster of his district, which the constable of the shire would embody in the array of the county, to be in turn marshalled in the army of the realm by the high constable of England."* Palgrave says the mailed leader of the Hundred became a rustic peace officer.† But constables and their developed type, the modern policemen, are more interesting historically than justices of the peace, for the former represent the actual survival of a more or less military power in the midst of civil society. Constables may be plain men in civic garb, but let these quiet sentinels of slumbering towns and villages but give the alarm of approaching danger. The whole community springs at once to arms. The entire town, if necessary, becomes a constable's watch. The alarm will quickly spread from hamlet to hamlet, and from shire to shire, until the whole people becomes again an armed host, a *Landsturm* sweeping peril from its borders. The American Revolution sprang from town meetings in the North and parish meetings in the South, both warned by constables. The great armies levied by both sections of country during our late civil war, were but the uprising of the old militia spirit still lurking in our local institutions. And even the military system of Germany, with its power to draft the entire male population, must be regarded only as a more perfect development of primitive Teutonic institutions of a martial character.

The Normans reconstructed England upon the basis of existing local institutions. The Hundred and the Tithing were both retained, the latter, however, under the name of innumerable Townships and Parishes into which ancient Tithings had grown. The fact that Tithings are not distinctly mentioned under that name in the Domesday Book is not of such importance as Gneist‡ and other writers have alleged, for an original Tithing of inhabitants very naturally adopted some local name derived either from a leading family

* The Parish in History, 29. By a hereditary High Churchman. London, 1871.

† Palgrave, English Commonwealth, i. 201.

‡ Gneist, Verwaltungsrecht, i. 51, 59. But compare Palgrave, English Commonwealth ii. cxxi., where he shows that territorial Tithings existed in the reign of Henry III. (1216–72), and, indeed, as early as the reign of Athelstan (925–941). In the Rolls of the Itinerary of Devonshire, 23 Henry III., occur such entries as "Thedinga de Herticumbe," spoken of as synonymous with the "Villa de Herticumbe."

or from geographical surroundings. But the old name of Tithing lingered on, in connection with local names, in very many English counties, in Gloucestershire and Worcestershire, and "in all counties south of the Thames (except Kent and Cornwall) where they answer to the townships of other counties."* Tithings still exist in the south-west of England, in Somersetshire and Wiltshire. Mr. Edward A. Freeman, the English historian, during his recent visit to Baltimore, informed us that he lived in the Tithing of Burcott, Wells, County Somerset, which Tithing used to tax itself for local purposes before the recent Poor Law and Highway Act.

There can be no doubt as to the substantial identity of the institutions of Saxon Tithingman and Norman Petty Constable. In the Rolls of Parliament belonging to the time of Henry VI. (1422–61), these officers are spoken of synonymous, "Chescun Conestable, Tithingman, ou chief Plegge, de chescun Ville ou Hamell." The coexistence of the old and new names may be thus explained. The head-men of the more important Tithings became known as Petty Constables, whereas in the vills and hamlets of less importance, although in the same neighborhood, the old Saxon Tithingmen remained. In some places they were called Chief Pledges, Elders of the Pledge or Borhs-Ealdors (corrupted in Lambard's time into Borsholders), Head-Boroughs, Borough-Reeves, Third-Boroughs and the like. "In some shires," says Lambard, "where euerie Third Borow hath a Constable, there the officers of the other two be called Third-borowes."† In a special treatise on the duties of the Justice of the Peace, Lambard says: "To be short, euery Constable, petie Constable, Tithingman and Borowhead, be Conservators of the Peace by their offices within the limits of their Hundreds, Towns, Tithings and Boroughs. And by the same reason our Borsholders in Kent and their Thirdborow in Warwickshire be Conservators also within their Boroughs. For Borowhead, Borsholder, Tythingman be three seuerall names of one selfesame office, and doe signifie, the chiefe man of the free pledges within the Borow or Tything."‡ Free Pledge or Frank Pledge is only a corruption of the Saxon *Frith-Borh* or Peace-Pledge. It was the personal Tithing, the Tenmannetale of Yorkshire, or ten men who were bound together, under the authority of the Tithingman, to keep the peace.

The Saxon Tithingman and the Norman Petty Constable were both elective officers. They were the Selectmen of their neighborhoods. The Petty Constable, so called to distinguish him from the High Constable of the Hundred, continued to be elected by his Tithing, Vill, or Parish, down to recent times. He was elected in one of two ways, either in the Vestry-Meeting of the Parish or in the Court Leet (German *Leute*) or popular Court of the Manor. The Tithingman, Gerefa, Reeve, or Constable, appears to have acted as

* Stubbs, Constitutional History of England, i. 86.
† Lambard, Duties of Constables, 8.
‡ Lambard, Eirenarcha, 14.

the agent of the Lord of the Manor, or of the Town, in regulating the Tithing and keeping the Peace-Pledge of the little community, but "he seems," says Palgrave, "to have been usually nominated or elected by the tenantry, who chose him by the presentment of the Leet Jury; at least, such was the general custom after the Conquest, a custom which was recognized as a part of the traditionary Common Law, and to which we may assign the same antiquity as to the other portions of the system."* Sir Thomas Smith, an old English writer contemporary with the fathers of New England, says, "Constables are commonly made and sworn at the Leets,—chosen thereto by the homage: and they keep that office [though usually an annual one in England] sometimes two, three, or four years, more or less, as the Parish doth agree."† The connection between Parish and Manorial institutions is very close and sometimes confusing. The Court Leet appears to have been a kind of popular police court for the town or parish over which a Lord had jurisdiction. The Leet was the common people sitting in judgment upon itself; it was a judicial survival of the primitive *Tun Gemot* or Town Meeting of the Saxon Tithing. The Vestry, or Parish Meeting, is only another civic form in which this ancient local institution has perpetuated its vitality. In some Parishes the Petty Constable was chosen at the Vestry Meeting instead of at the Court Leet, but whatever the local custom in regard to the election of the constable, he was required to warn and be present at all Parish Meetings, and, before the time of Archbishop Laud, frequently presided over Parish deliberations. "The Parish makes the Constable," said Selden, "and when the Constable is made, he governs the Parish."‡ There can be no doubt but that the Petty Constable, like the ancient Saxon Tithingman, was once the chief man of his neighborhood. Toulmin Smith says the Constable "formerly took precedence of the Churchwardens in Parish affairs. He long ranked as the first man of the Parish."§

We must regard the Parish and the Manor as institutions superimposed upon primitive Village Communities, Tithings, Townships, Hamlets (or Vills) of the Saxons. Mr. Pearson is inclined to believe that "the Tithing in many parts of England was the basis of the manor, the lord becoming the natural president of the Tithing Court, as he bought up the land or received the service of the freeholders by voluntary transfer."‖ The Church, too, built upon existing foundations. Pagan villages like Totteridge (the ridge of Tuisco or Tuto), Wednesbury (the borough of Wodan), Torrington (the town of Thor), became Christian Parishes.¶ Mr. Pearson,

* Palgrave, English Commonwealth, i. 67, 81, 82, 124.
† Sir Thomas Smith, Commonwealth of England (1621), Book ii. cap. 25, quoted in Toulmin Smith's "Parish," 125.
‡ Selden, Table Talk, "People."
§ Toulmin Smith, The Parish, 121.
‖ Pearson, Historical Maps of England, 52.
¶ "The Parish in History," 6.

in the preface to his Historical Maps, says the priests adopted the secular divisions which they found ready to their hands. He has shown in his maps the territorial identity of many ancient Saxon Tithings with modern English Parishes and Townships. He says, "Ten families constituted a tithing, the self-governing unit of the state, which is now represented among us by the parish, and ten tithings were a hundred, whose court administered justice among the little communities themselves."* Pearson has shown that the Hundreds of Devonshire contain on the average about ten Parishes each, a strong argument for the historical identity of these civic units with the original territorial Tithings in Devonshire of which Palgrave speaks.

Most important for this line of inquiry is a principle of the Common Law which has been repeatedly enunciated in England, to the effect that wherever there is a Constable there is a Parish or a Township.† "A separate Constable," says Toulmin Smith, "is an unquestioned criterion of the separate recognition of a Parish. The fact of having a Constable has always been the necessary incident of a Parish or Vill."‡ Chief Justice Hale observed on this point: "One Parish may contain three vills: the Parish A may contain the vills A, B, C; that is, when there are distinct Constables in every one of them: but if the Constable of A doth run through the whole, then is the whole but one vill in law."§ The term Vill is the Norman equivalent of the Saxon Tun, Town, or Tithing. Blackstone says, "Tithings, towns or vills are of the same signification in law."‖ The Parish often embraced several of these petty local divisions. In the time of Edward IV. some Parishes in Cornwall are said to have prospered so much as to have become divided into as many as twelve or fifteen parts, each treated as a Vill by itself. Doubtless an original Tithing of inhabitants took up more and more waste land as circumstances required, and, doubtless, with an increasing population, colonial hamlets sprang up, electing their own Tithingmen, becoming independent, or remaining more or less united under the comprehensive name of some one leading Tithing, Town, Parish or Manor, like the Villes or Parishes composing a New England Town.¶

It is an interesting fact, which has never yet been emphasized, that the origin of New England towns is closely connected with military and constabulary institutions. As the Saxon Tithings and Hundreds began in the local settlement of armed bands, keeping corporate watch and ward, so originated the first "Wards" of Ply-

* Pearson, Hist. of England during the early Middle Ages, i. 250.
† Gneist, Self-Government in England, 84; Fischel, The English Constitution, 323.
‡ Toulmin Smith, The Parish, 16, 120.
§ Waldron v. Roscarriot, 1 Modern Rep., 78, quoted by Toulmin Smith, 120.
‖ Blackstone, Commentaries, i. 114.
¶ The multiplication of Villes or Parishes within original town limits may be seen in a case like Newton, now a city, but once a town embracing Newton Centre, Newtonville, West Newton, Newton Upper Falls, Newton Lower Falls, Auburndale, Newton Corner, &c.

mouth Colony. It should not be ignored that the first landing in New England was not that of missionaries or defenceless exiles upon Plymouth Rock, but of armed men exploring Cape Cod, "with every man his musket, sword, and corslet, under the conduct of Captain Miles Standish." Undoubtedly the motives of the invaders were peaceful, but they came with arms in their hands, actually equipped with "armor" and "coats of malle," with "curtlaxes and short swords." There are repeated references in the Pilgrim Journal to the "armor" which they wore. They say, "We marched through boughs and bushes—which tore our very armor in pieces." When the explorers came upon a heap of buried Indian corn, the record says "we set our men sentinels in a round ring, all but two or three, which digged up the corn," of which the company took away as much as they could carry, "for we were so laden with armor that we could carry no more." This corn the Pilgrims afterward paid for when they found the owners, but their original procedure is very remarkable. The setting of a cordon of sentinels for three men to dig corn was a state of armed peace worthy of the ancient Saxons. When the explorers thought they were approaching an Indian village, they confess "we lighted our matches [matchlocks] and prepared ourselves." Of course they did. They were Englishmen believing in self-defence. Every step of their advance was marked by cautious military measures. One night a great noise was heard. The sentinels called, "Arm! Arm!" The Pilgrims bestirred themselves and shot off a couple of muskets and the noise ceased. The next day a real attack was made by the Indians. Again the little company flew to arms. Captain Standish had a flint-lock ready, and "made a shot," and after him another. He told the rest "not to shoote till they could take full aime." Some of the company ran out from the barricade "with coats of malle on, & cutlesses in their hands," to get their guns from the shallop, which secured they "let flye" among the Indians "and quickly stopped their violence." Thus "it pleased God to vanquish our enemies and give us deliverance."*

* These details and many more of a similar character may be found in Young's Chronicles of the Pilgrims (or Dexter's Mourt's Relation) and in Bradford's History of Plymouth Plantation.

[Reprinted from the N. E. Historical and Genealogical Register for July, 1882.]

CONSTABLES.

By Herbert B. Adams.

THE first landing at Plymouth, on "Forefathers' Day," was by one of these exploring parties. They found there a good harbor for shipping, and they "marched also into the land," and found divers Indian cornfields, a deserted Village Mark, with running brooks, altogether "a place very good for situation." So the explorers, who had been ranging up and down Cape Cod for more than a month, returned to the Mayflower which had been anchored all this time in the harbor at Cape Cod, but which sailed into Plymouth harbor on the 26th of December. On the 28th another exploring party "went a land" and "marched along the coast for some seven or eight miles." Two days afterward, on the 30th of December, which should be forever memorable as the founders' day of Plymouth Town and Colony, the Pilgrims, "after landing and viewing the places—came to a conclusion by most voices, to set—on a high ground, where there is a great deal of land cleared." There above the open Mark rose the "great hill" upon which the Pilgrims proposed to plant their "ordinance," so as to command the surrounding country. Fort Hill, now called Burial Hill, was a natural acropolis, chosen for the defence of the "town," which was to be built beneath its shelter. The whole locality they thought could be easily "impaled." This was the very idea of a Saxon Town, from Tun or Zun, a place hedged in. Plymouth Rock well symbolizes, in the popular mind, the landing of the Pilgrims in the place of their settlement, although the final disembarkation did not

occur, perhaps, until March 31, 1621;* but on Dec. 30th, 1620, the real corner-stone of Plymouth and of New England was laid in the "conclusion by most voices to set—on a high ground," on the seaward slope of Fort Hill, which symbolizes the Town-idea of our Forefathers, a self-guarded village community, keeping watch and ward, and maintaining peace within its borders. There upon that acropolis was afterward " builte a fort with good timber, both strong and comly, which was of good defence, made with a flate rofe & batllments, on which their ordnance were mounted, and wher they kepte constante watch, espetially in time of danger. It served them allso for a meeting house, and was fitted accordingly for that use."†

It is a noteworthy fact that after the assertion of the democratic principle of "most voices," or a majority vote in the choice of a site for settlement and for the building of a Town, the first institution actually planted was of a military character. Before any Church Meeting or regular Town Meeting on shore, before the Common House which first sheltered both was built, the Pilgrims instituted what they called "the court of guard."‡ This was a night watch set by those on shore, Monday, January 4, 1621, from fear of the Indians, and for the protection of the products of the Pilgrims' first day's labor in felling timber and providing stuff for building. On the following day all able-bodied men came ashore and resumed their labor, but they returned to the ship that night leaving "some twenty to keep *the court of guard*." Thus, ever on the alert, the Pilgrims proceeded to build their town "in two rows of houses for more

* 1621, March 21 (31), "a fine warm day.—This day with much ado, we got our carpenter, that had been long sick of the scurvy, to fit our shallop to fetch all from aboard." Young's Chronicles of the Pilgrims, 190.

It may be that this passage refers solely to movable goods, and not at all to passengers yet on board; but the Journal of Jan. 29 (Feb. 8) says on that day, "Both the long-boat and the shallop brought our common goods on shore" (see Young, 170). And yet after this date we find Pilgrims still on board, for the Journal of Feb. 4 (14) says, "though we rid in a very good harbor, yet we were in danger, because our ship was light, the goods taken out and she unballasted." It is probable that some of the pilgrim band did not land as early as is commonly supposed, for Bradford (92) speaks of "schuch of ye passengers as were yet abord," who showed great kindness to the sailors when they in their turn began to fall ill. When the thatch of the Common House was destroyed by fire on the 24th of January, Bradford (100) says "some were faine to retire abord for shilter." There was a constant going to and fro between ship and shore throughout the winter, the men remaining on board for days during stormy weather. Probably there never was any general disembarkation upon Plymouth Rock at any one time, whether on the 21st of December, when the Mayflower was far away at Cape Cod, or on the 4th of January, according to the view advanced by S. H. Gay, in his article in the Atlantic Monthly, November, 1881, "When did the Pilgrim Fathers land at Plymouth?"

† Bradford, History of Plymouth Plantation, 126. It is very interesting that the Plymouth Church was first sheltered in the Common House and afterward in a Fort surmounted by six cannon. So fully were the Pilgrims imbued with the martial spirit that they actually marched to church, assembling "by beat of drum, each with his musket or firelock, in front of the captain's door." They marched up Fort Hill three abreast. "Behind comes the Governor, in a long robe; beside him, on the right hand, comes the preacher with his cloak on, and on the left the captain with his side-arms and cloak on, and with a small cane in his hand, and so they march in good order, and each sets his arms down near him. Thus they are constantly on their guard night and day." Letter of De Rasières, a Dutch officer from New Netherlands, who visited New Plymouth in 1627. See Collections of New York Hist. Society, New Series, i. 362, or Russell's Pilgrim Memorials, 143.

‡ Young's Chronicles of the Pilgrims, 169.

safety." But their first building was a Common House for a "generall randevoze." Here the first Church Meeting on land was held January 31, 1621. Here was held the first regular Town Meeting in New England, February 27, "for the establishing of military orders." Miles Standish was chosen Captain, and was given "authority of command in affairs."* This was the first strictly local election in New England. It occurred more than a month before the election of Carver as Governor of *Plymouth*. To be sure Carver had been "confirmed" Governor on board the Mayflower in the harbor at Cape Cod, November 21, 1620, immediately after the signing of the Compact, but Governors and Assistants had been chosen for each ship "to order ye people by ye way,"† before the Colony set sail from Southampton. It is true John Carver was actually Governor when the Pilgrims landed at Plymouth; but it is also true that Miles Standish was at that time *Captain*, and had long been recognized as such in the conduct of explorations. The point is, that, in the actual foundation of the Colony at Plymouth, the choice of a military officer to command in *affairs* antedated the choice of civil officers, just as the "court of guard" antedated the General Court or Town Meeting, in the strictest meaning of those terms, although of course the "common sense of most" was the actual basis even of these martial institutions for defence. The *salus publica* was the foundation principle of Plymouth as of all civil society.

Immediately after the election of Standish, the popular assembly was broken up by the appearance of two savages on Strawberry Hill or Watson's Hill. The Townsmen armed at once and sent their headman, Captain Standish, accompanied by Stephen Hopkins, across the intervening Town Brook to parley with the Indians. From this time on, for many years, Captain Standish served as Chief Messenger for the Town Meeting, General Court or Folkmoot of Plymouth. He was chief spokesman in parleys with the Indians. He demanded of the fishermen at Cape Ann the restoration of Plymouth property. He arrested Morton at Merry Mount, and levied the expense of sending the rogue back to England upon Cape Ann and other local plantations then existing in New England. He arrested Indians and kept them in custody. He protected the life of one Indian simply because he was "a messenger," it being against "*the law of arms*—in Europe to lay violent hands on any such." He exercised the right of life and death over Indians beyond Plymouth borders, for in Massachusetts, at Mr. Weston's feeble plantation, where certain treacherous savages were plotting the destruction of all the settlements, Standish and his men shut up the leaders in a cabin and there killed them, "striving to the last." Other Indians were killed or hanged by his orders. He returned home to Plymouth, says the Pilgrim record, "in safety, blessed be God! and

* Young's Chronicles of the Pilgrims, 180.
† Bradford, Hist. of Plymouth Plantation, 68.

brought the head of Wituwamat with him," which was "brought to the fort and there set up." There is something old English about this method of procedure. It looks like primitive martial law. During the absence of Standish an Indian had come into Town who was suspected of being a spy. By order of the Governor he was arrested, taken to the Fort, "locked in a chain to a staple in the court of guard, and there kept," being told that he must remain content "till the return of Captain Standish from Massachusetts."*

What shall we call this Captain of Plymouth's Guard, this Keeper of the Town's Fort or Castle, this leader of expeditions, this organizer of militia by "squadrons or companies," appointing his own officers, holding "a general muster or training,"† this Captain-General who became in 1645 the head of a military commission appointed by the four United Colonies of New England, but who still "condescended"‡ to review the local militia of Plymouth, this Marshal exercising the right of life and death in the conduct of Indian campaigns, this Martinet of a little village, where the first offence was John Billington's "contempt of the Captain's lawful command with opprobrious speeches," the offender being therefor "convented before the whole company—and adjudged to have his neck and heels tied together"?§ What shall we call the man under whose direction all such penalties must have been executed in early Plymouth? Surely not a mere Petty Constable, not simply a Captain of the local Militia, for he had also authority of command in public affairs. He was a colonial officer of the martial type, sometimes carrying the law in his own person like an ancient Roman prætor, an Earl Marshal or a Lord High Constable of England. Let us call Miles Standish the first martial representative in New England, as Miles of Gloucester was the first representative in Old England, of the iron hand of *sovereign* constabulary power, whence the "lower constableship was drawn and fetched,—as it were, a very finger of that hand."

In the year 1632 it was ordered by the General Court "in regard of our dispersion so far asunder, and the inconveniency that may befall," that every inhabitant provide himself a sufficient musket or other serviceable piece for war, also with ammunition.‖ Such

* Standish's Expedition against the Indians of Wessagusset, in Young's Chronicles of the Pilgrims, 336–45. The above details have been gathered from Mourt's Relation and from Bradford's History of the Plymouth Plantation.

† Young's Chronicles of the Pilgrims, 284.

‡ Collections of the Massachusetts Historical Society, Second Series, vol. x. 60, "Notes on Duxbury."

§ Young's Chronicles of the Pilgrims, 199. This being "the first offence" committed in Plymouth, it was pardoned upon the culprit humbling himself; but soon after two servants, who had fought a duel, were adjudged to the above Old English penalty, which was duly inflicted. John Billington was afterward, in 1630, hung for murder, being tried and executed by due forms of law. See Hutchinson, Hist. of Massachusetts, vol. ii. 413. The execution must have been under the supervision of Captain Miles Standish, for there was, at that time, no other High Sheriff or Constable in Plymouth Colony. The first differentiation of these offices did not occur until 1634.

‖ Plymouth Col. Records, i. 6; Laws, 14, 31. For "Public Armes," see Laws, 51, 105; "Townes Armes," 181. *Town Armor!*

requirements, involving constabulary inspections and the evolution of a system of penalties for default in armor, carry us back to the ancient Statute of Winchester, whereby every man in the kingdom was obliged to have in his house defensive armor for keeping the peace; or, to the still earlier Assize of Arms (1181) whereby the freemen of every community were to have each a doublet of mail, a head-piece of iron, and a spear.* New England is linked to Old England by an iron chain of martial habits and martial institutions. Captain Miles Standish and the Town Constables of Plymouth Colony are as much links in this chain connecting the beginnings of our Towns with the Parishes of the mother country as if these men had come over to New England with the Town Armor and Parish Records of their native hamlets. In fact, the Pilgrims entered New England in coats of mail, armed also with the Town idea and the Common Law. "There already—ay in the Mayflower's cabin," said Rufus Choate, "was representative government. There already was the legalized and organized town, that seminary and central point and exemplification of elementary democracy."†

By the law of England, the criterion of the existence of a Parish or Township is the presence of a local Constable. It is worth while to apply this criterion to a study of the genesis of Towns and Parishes in New England. We do not suppose that this has always been a conscious standard for legislative action in the recognition of towns or for the actual determination of Town or Parish units, but we claim that without a Constable, or some power representing the corporate responsibility of the community for the preservation of the local peace, a Town would be an impossibility. There have been Towns in New England without Selectmen, without Ministers, without a Church or a Common School, but there never was a Town without a Constable. He is the *sine qua non* of an organized Parish or Township, and that by the authority of the Common Law, than which there is no greater authority in the history of English institutions. Miles Standish was practically the first Constable of Plymouth. He was the first officer chosen with "command in affairs." There is no evidence of the existence of any other Constable at Plymouth until Jan. 1, 1634, when Joshua Pratt was "chosen to the office of messenger and constable for Plymouth, and sworne to faithfulnes in the same."‡ The Constable of Plymouth in his capacity of Messenger, appears to have been a kind of High Sheriff. In 1637 we find a Plymouth man sworn Messenger for the whole Government and Constable for the Town of Plymouth. The duties of Messenger, according to the earliest law upon the subject, were to be ready at the Governor's command or any of the Assistants' warning, "to doe such service as shall be appointed for the good of the seve-

* Stubbs's Select Charters, 154.
† Life and Writings of Rufus Choate, i. 385.
‡ Plymouth Col. Records, i. 21.

ral Colonies,* within this Government," and to be esteemed a public officer for the execution of warrants in any part thereof. The use of the plural form "Colonies" as synonymous with Towns or Plantations within the Government of Plymouth, is curious and suggestive. As Constable for the special "ward" of Plymouth, this officer was to have charge of the region from Jones's River southward, as far as any inhabit. He was to serve as "Jaylor to keep such as shall be committed." He was to execute punishment and penalties, and to give warning of marriages approved by civil authority. He was furthermore to act as Sealer of Weights and Measures, and as Surveyor of land, according to government orders. In his oath the Meesenger swore loyalty to the King, and promised to promote "the welfare of the severall Colonies w^th^in this Government of New Plymouth," and as "Constable in the ward of New Plymouth," to see that his Majesty's peace be not broken.† Here, therefore, in the hands of one local officer, we see a bundle of powers derived from the Petty Constable of the English Parish, the High Constable of the Hundred, and the High Sheriff of the County.

On the very day Joshua Pratt was chosen Constable and Messenger for Plymouth, Christopher Wadsworth was "chosen constable for the ward of bownded between Jones River & Green's Harbour, and to serue the King in that office for the space of one whole yeare & to enter upon the place with the Gov^r^ elect."‡ In like manner and at the same time, Anthony Annable was chosen Constable for the Ward of Scituate. The *omission* of the name Duxbury in the first instance is interesting, for the omission implies that the locality bounded by Jones's River and Green's Harbor was literally a Ward of Plymouth, although there can be no doubt as to the identity of the place with Duxbury, which name, according to Justin Winsor, was bestowed in compliment to Standish, who settled in the above region, and whose ancestral acres in England were known as Dukesberry. "As early as 1630," says Winsor, "for facilities of pasturage and better planting, lands had been occupied in Duxbury, the people returning to Plymouth in the winter for better housing and ease of attending worship."§ In the Plymouth Colony Records, under the date 1632, we find a formal agreement on the part of Captain Standish, John Alden, Jonathan Brewster and Thomas Prince, to move back into Plymouth for the winter time, in order that they may the better repair to the worship of God.‖ In 1634 "a palisade was ordered to be made beyond the creek at Eagle's Nest, where Standish, Brewster and Paybody lived,"¶ and that same year a Constable's Ward was instituted in the above district.

* Plymouth Laws, 18. † Ibid, 19.
‡ Plymouth Col. Records, i. 21.
§ Winsor, Historical Account of Plymouth Colony and County, 5, in Plymouth County Atlas, G. H. Walker & Co., Boston, 1878.
‖ Plymouth Col. Records, Book of Deeds, 6.
¶ Collections of Mass. Hist. Soc., Second Series, x. 68.

The term "Ward," first used in designating Duxbury as a civic unit, is a very important connecting link between the Parish institutions of Old and New England. Wards are familiar enough in modern city politics, but historically City Wards were derived from Hundreds, each Ward being under a *Hundredes Ealdor* of *Aldermannus Hundreti*, and each Ward having subdivisions called Tithings or Precincts."* But Old English Parishes had also their Wards and Precincts, which were often synonymous with Vills or Townships. The Parish Ward was simply a Constable's Beat or District. The term Ward is derived from the Saxon *Weard* or Guard, and is closely connected with the ancient system of Watch and Ward, from which our modern police system has evolved. Both Watch and Ward were under the direction of a local Tithingman or Constable. The Ward was kept by day and the Watch by night. By the Assize of Arms (1252), for enforcing Watch and Ward, there were to be appointed in every Vill or Parish four or six men, according to the size of the place, who should watch throughout the night from sunset to sunrise, and if any stranger attempted to pass them, they were to arrest and detain him until the morning, when, if he could give a good account of himself, he was set free, but if he proved a suspicious character, he was handed over to the *Tun Gerefa* or Town Constable. If strangers would not allow themselves to be arrested, the aforesaid watchman levied the Hue and Cry upon them, that is, they raised the Town and pursued the fugitives with shouts and cries from Parish to Parish, until they were finally captured, *cum clamore et hutesio* (Hue and Cry) *de villa in villam, donec capiantur.*†

The ancient Plymouth records contain frequent allusion to "those on Duxborrough Side." In old English usage, a "Syde" was something more than the name would seem to imply: it was a district, an outlying quarter of the Town or Parish, but frequently an organic part of the same, like Fulham Syde of Fulham Parish. The Syde had its Sydeman,‡ whose duties were much the same as those of a Tithingman or Petty Constable. A Syde without a local officer was only a geographical idea. A Sydeman made the place a civic community. The term Side is not uncommon in the Towns of New England; for example, East Side in the Town of Woburn. The name frequently occurs as the designation of a particular neighborhood as lying on this or that side of the Town, just as we say "North End" or "North Part." Vills, like Sides in New England, are frequently

* Palgrave, English Commonwealth, i. 200; Thorpe, Ancient Laws and Institutes of England, ii., Glossary, "Hundredes Ealdor." According to Stubbs, in the North of England "the shires are divided into Wards, and to the south into Hundreds." Const. Hist. i. 96.

† Stubbs's Select Charters, 371. See also Statute of Winchester, 1285, for similar regulations concerning Watch and Ward, Stubbs's Select Charters, 473–4.

‡ In the 4 Jac. I., cap. v., we find penalties prescribed for the repression of drunkenness, and the presentment of offenders is made one of the duties of "Constables, Churchwardens, Headboroughs, Tithingmen, Alecunners and *Sydemen*."

mere localities without any organic life, although the Vill is usually more personal, for example, *Kelloggville*, whereas the Side is more geographical, taking its name usually from some point of compass. But a Side or a Vill without a Constable has no civic existence in the Common Law.

We must regard Duxbury Side as a Vill or Parish of Plymouth until June 7, 1637, when it was recognized as an independent, self-governing "township"* by the General Court. A church, or chapel of easement, was established on Duxbury Side as early as 1632, but the existence of a Church does not constitute a Parish according to the Common Law. The Parish is a civil institution both in origin and history. The only fact which gave Duxbury, in 1634, a legal existence as a Vill or Parish within the Town or larger Parish of Plymouth was the election in a Plymouth Town Meeting of a Constable for that Ward. As a Church-society Duxbury enjoyed neither unity nor pastoral headship for several years after her first settlement. Many of her leading citizens continued to attend church at Plymouth, and there was no regular minister in Duxbury until 1636.† But the presence or settlement of a minister does not make a Parish. In point of law and in point of fact, however, Duxbury was a Parish unit from the moment Christopher Wadsworth was chosen Constable for a Ward‡ of Plymouth bounded by Jones River and Green's Harbor.

For several years after 1634 Constables for the Wards of Duxbury and Scituate continued to be chosen in Plymouth Town Meeting. For instance, it was agreed January 1, 1635, that Christopher Wadsworth and Anthony Annable, Constables of Duxbury and Scituate, should continue in their places another year.§ The practice of electing Constables in the presence of all the freemen of the colony appears to have gone on for several years after the recognition of Duxbury and Scituate as independent self-governing Towns, but we are inclined to suspect that, from the very beginning of constabulary elections, the candidate was nominated by the neighborhood or precinct which he was appointed to govern. In 1645 we find "constables chosen by the severall townships and presented to this court and sworn."‖ Plymouth and Scituate then had two Constables each; Duxbury, Sandwich, Marshfield, Barnstable, Yarmouth,

* Plymouth Col. Records, i. 62. Cf. ii. 31, for an interesting case where "eich *side* of the towne, viz. the Eele Riuer and Joames Riuer shall for eich *side* bring six musketts wth shott, pouder, and the towne of Plymouth other six euery Lord's day to the meeting with their swords and furniture to euery piece, ready for service if need require."

† Clark, Historical Sketch of the Congregational Churches in Massachusetts, 15. Winsor, History of Duxbury, 171.

‡ The use of the term "Ward" for a germinant town was very general throughout Plymouth Colony. Constables were always sworn to serve in such and such a Ward (Laws, 10), always corresponding to a local settlement or Plantation; for example, "the ward of Barnstable (Plym. Col. Rec., i. 137). One of the most interesting cases is the "Ward of the River Kennebecke" (iii. 59), the Pilgrim trading-post. This ward was something like the Constables' Beats along the rivers of Alabama.

§ Plymouth Col. Records, i. 32. ‖ Ibid, ii. 83.

Taunton, Rehoboth, each one Constable. In 1652 the Constables of Sandwich, Yarmouth and Eastham were allowed "to be sworne at home."* Thus gradually the Towns of Plymouth Colony settled back into old English Parish usages of electing and qualifying their own Petty Constables, just as these same towns gradually became known under good old English names, although for the most part planted in old Indian localities, and at first designated as such.

The process of reproducing the Parish institutions of the mother country could not have been entirely an unconscious one with the settlers of Plymouth Colony. Constabulary oaths expressing loyalty to the King prove that the colonists still felt themselves English subjects and under the sovereignty of English law. The correspondences between the local institutions of Plymouth and those of old England, are too striking to admit of other interpretation than conscious imitation. In the prefaces to their Law books, the Plymouth legislators confess that they did not reject such of the laws of their native country "as would conduce vnto the good and grouth of soe weak a begining—as any Impartiall eye Not forstaled with prejudice may ezely deserne."† The Plymouth lawgivers even re-instituted Tithings for the government of the Indians by a system of Frank Pledge. As the conquered Saxons, living under Norman lords, were held to right in their own villages by a system of Tenmentale under their own elected Tithingmen, so the Indian villagers were bound to keep the peace in groups of ten, each group under the charge of an Indian Tithingman, whose duty it was to "take the inspection, care, and oversight of his nine men and present theire faults [and] Misdemenors to the overseer,"‡ who was appointed by the Governor. The white overseer and the Indian Tithingmen appointed Indian Constables, holding office for a year, whose duty it was to attend the courts kept among the Indians for the purpose of "ciuilliseing"§ them, and to execute the warrants of the Overseer. If an Indian servant of a white man ran away into an Indian neighborhood, the Indians with whom he took refuge were bound by law to give immediate "notice of the said Runaway to the Indian Constable who shall imediatly apprehend such Indian servant; and carry him or her before the Overseer or next Majestrate, whoe shall cause such servants to be whipt; and sent home by the Constable to his or her master whoe shall pay said Constable for his service."‖

It was required by law that "in every Constablerick there be a paire of stocks and a whipping post erected. Also a cage weh shall be of competent strength to detaine a prisoner, & these to be erected in such places as shall be thought meet by the severall neighborhoods where they concerne, vpon the penalty of X s. for any towne-

* Plymouth Col. Records, iii. 8. † Ibid, Laws, 72.
‡ Ibid, 253.
§ Ibid, 239. Courts were held also among the Indians of Massachusetts. Mass. Col. Rec., ii. 188.
‖ Ibid, 255.

ship w^ch^ shalbe defectiue herein."* Such local institutions as the Town Cage,† the Parish Stocks, the Whipping Post, and a Constable to superintend whippings, cannot be explained as indigenous to New England, for they are the common inheritance of all English colonies in America. One Parish custom in particular clearly allies the Towns of Plymouth Colony with Old English Parishes, and that is the method of dealing with Tramps. By a law of 1661, reënacted in 1663, it was ordered by the General Court of Plymouth, that "if any person or persons shall come into this Gouvernment, that *according to the law of England* may justly be accounted vagabonds; the *Marshall* or the Constable of the Towne wherevnto they come, shall apprehend him or them; and vpon examination soe appeering; hee shall whip them or cause them to be whipt with rodds; soe as it exceed not fifteen stripes; and to give him or them a passe to depart the Gouvernment, and if any such person or persons shalbee found without theire passe; or not acteing according therevnto they shalbee punished again as formerly."‡

The above regulation was first revived at Plymouth, not by Statute but as a part of English law, for as early as 1641 we find that Jonathan Hatch was taken as a vagrant, and for his misdemeanors was censured to be whipt, & sent from constable to constable to Leiftennant Davenport at Salem."§ How minutely this procedure corresponded with old English Parish usage may be seen by examination of Lambard's Duties of Constables, where it is said to be incumbent upon the Constable, Headborough, or Tithingman of the Hundred, Parish or Tithing, to arrest every Rogue and publicly whip him upon the bare back until it be bloody, and then send him from Parish to Parish, by the officers of the same, until the Rogue come to the place where he was born; but if that place is not known, then to the Parish where the Rogue last dwelt for a whole year; and if that also is unknown, then to the Parish through which the Rogue last passed without receiving a flogging.‖ Such a vigorous policy would probably exterminate the modern Tramp.

The law against vagabonds was applied with considerable severity to strolling Indians. It was enacted by the General Court that no Indian should remove from one place or "plantation" to another without a permit in writing from his "overseer," declaring whither he was going, for what reason, and how long he was going to stay. If any Indian was found without his pass, he was arrested by the Constable of the place into which he came, taken before "the next overseer," who made the Indian pay a fine of five shillings "or be

* Plymouth Col. Records, Laws, p. 11, 95 circa 1636.

† Cages were set up in the market places of the larger towns in Massachusetts. Mass. Rec., v. 133.

‡ Plymouth Col. Records, Laws, 206.

§ Plymouth Col. Records, ii. 36.

‖ Lambard, Duties of Constables, 45–6. Compare with Lambard's Eirenarcha, 204. The English Statutes are full of legislation regarding Rogues, Vagabonds, and Sturdy Beggars, e. g. 7 James I. cap. 4.

whipt and sent home to his owne place." If there was no local "overseer" of Indians in the place whither the vagabond came, then "the English Constable in that Towne" discharged the above office.* If Indians were found drunk in any "Township," they were taken by "the Constable of the Towne and sett in the stockes."† By another law, the penalty for the first offence was five shillings "or be whipt;" for the second, ten shillings "or be whipt; and soe for euery time any of them shalbe convicted of drunkenes before any Court, Majestrate, ouerseer, tithingman or English Constable."‡ The judicial functions of old English Parish officers are here revived. It is noteworthy that the first Selectmen of Plymouth Colony had judicial duties.

The close connection between Petty Constables and Tithingmen in Plymouth Colony is evident from the coëxistence of these institutions in the regulation of Indian Tithings and Indian villages, and from the fact that, in early Plymouth Towns, Constables discharged the Sunday duties, which, in later times, were usually associated with the office of Tithingman, although, as we have elsewhere shown,§ the Tithingman in early New England was by no means a mere Sunday Constable or ecclesiastical whipper-in, but *the head-man of a neighborhood of at least ten families*, as in Saxon England. From the laws of Plymouth Colony we learn that great abuses had arisen in sundry Towns by reason of certain persons behaving themselves profanely on the Lord's day, staying out of Meeting, playing, jesting, and sleeping in the vicinity of the Meeting House. The Constables were instructed to take notice of such persons and to "sett them in the stockes." The Constables were also to prevent "vnessesary violent ryding on the Lord's day."‖ All these peculiar customs originated, not with the Pilgrims or Puritans, but in the Parishes of Old England.

The reproduction of constabulary institutions in the Massachusetts Colony we cannot notice in detail, but the process was immediate, and even more perfect than in Plymouth Colony. At the third Court of Assistants held at Charlestown September 28, 1630, John Woodbury was chosen Constable of Salem, and Thomas Stoughton Constable of Dorchester. At a Court held three weeks later, Constables were appointed for Charlestown, Roxbury and Watertown.¶ It is not likely that these colonial appointments were anything more than the confirmation of existing officers and of candidates presented

* Plymouth Col. Records, Laws, 254.
† Ibid, 140. ‡ Ibid, 253.
§ "Tithingmen," Proceedings of American Antiquarian Society, New Ser., vol. i. Part 3.
‖ Plymouth Col. Records, Laws, 214, 224. Compare the Sunday duties of Plymouth Constables with those of the Salem Constables, see extract from MS. Town Records, 1676, in Osgood and Batchelder, Sketch of Salem, 17: "three constables are to be at the three great doors of the meeting-house and allow none to go out till all the exercises are finished. All the boys are to sit on the three pair of stairs in the meeting-house, including those of the pulpit. One constable is to keep the dogs out of the meeting-house." This office reminds us of the Dog-Whipper in English Parishes.
¶ Mass. Col. Rec., i. 76, 79.

by a local constituency. John Woodbury, who "did now [in 1630] take the oath of a constable," was the old planter who had been sent as *messenger* to England in 1626 by Roger Conant and his companions. In 1628, before Captain Endicott came over, old Naumkeag had levied a local tax* of £1 10 shillings, in payment of an assessment made by Plymouth colony for the expenses incurred by Captain Miles Standish in arresting Morton at Merry Mount and in sending the rogue back to England. Who more likely to have collected and paid over this tax than faithful John Woodbury? In 1629 Gov. Endicott received orders from the Massachusetts Company to "appoint a carefull and dilligent overseer to each family."† With the adoption of this system, which is the first approach in New England to the old English system of Tithingmen, it is highly probable that some *one* family overseer should have had superior authority over all the rest, just as did the "overseer" appointed by the Governor of Plymouth colony, over the Indian Tithingmen throughout Plymouth towns. Governor Endicott was distinctly instructed‡ by the Massachusetts Company to look into the workings of his government by families, and, if need be, to make an example of offenders; "otherwise," said the Company, "your government wilbe esteemed as a scarcrow." Correction, they added, was ordained for the fool's back. As a wholesome warning to offenders, "a house of correction" was to be instituted. Endicott had authority to inflict punishment according to the nature of the offence and the laws of England. Public whippings and commitment to a lock-up or house of correction imply the existence of a Constable. When, therefore, we find Captain Endicott at the Court of Assistants, September 28, 1630, nominating John Woodbury as Constable for Salem, we are inclined to think it was merely for the sake of confirmation under the new government, and that John Woodbury was already quite familiar with constabulary duty.

Let us now sum up in brief the more important functions of Petty Constables as reinstituted in New England. The following enumeration is drawn from the laws of the Massachusetts Colony, but what was true of the local institutions of that Colony is true to a great extent of other New England Colonies. Every one of the following duties has its Old English prototype: a Constable had power to "whipp & punish" or to provide for the same; to send or convey persons "from connstable to connstable;" to "speede away all hues & crys" against thieves, robbers, murderers, manslayers, peacebreakers, on penalty of forty shillings in capital cases; to apprehend without warrant all persons "overtaken with drincke," all profane swearers, Sabbath breakers, vagrants, night-walkers; to search for

* Morton, New England's Memorial (ed. 1826), 142; Gov. Bradford's Letter Book, 1624-30, in Collections of Mass. Hist. Soc., 1st series, vol. 3, p. 63.
† Mass. Col. Rec., i. 400.
‡ Massachusetts Col. Records, i. 393, 397, 400, 401, 405.

such persons in suspected or disorderly places and in houses licensed to sell beer or wine; not to apprehend by order of magistrate without a warrant; to warn any person to assist him, and none to refuse on penalty of ten shillings; to "carry his black staffe" in execution of his office that none may plead ignorance; to take notice of "common coasters, vnprofitable fowlers, & other idle persons, & tobacco takers—and of such as harbor any young people, children, servants, apprentices, students or schollers," without hastening them to their respective employments; to aid custom house officers in the search for wines, by breaking open cellars, &c.; to levy all fines and "gather all toune rates;" to clear accounts with the "countrje Tresurer;" to register in a book all lost goods or strays and to cry the same at "three generall toune meetings or lectures;" to present the names of all persons refusing "to watch & ward;" to begin "the constables watch" annually on the first of May and not give over until the last of September; to see that the watch be of "sufficijent able men, & not youths;" to secure or commit "any inhabitant or stranger after tenne of the clocke at night, behaving themselves deboist,"* and not giving a good account of themselves to "ye constable or watchman," the Constable to carry them before a magistrate the next morning; to provide "at the tounes charge" all weights and measures required by law for "toune standards," and, upon warrant from the "toune sealer" to warn all inhabitants to bring in their weights and measures to be tried and sealed; to serve all attachments as may be directed in any civil case; to "warne the freemen of theire toune in the 2d week of March annually to mete together;" to make return under their hand of the names of deputies; to pay the Marshal General three pence out of every attachment that may be served; to execute warrants for the choice of jurymen, and to warn the persons chosen; in case of the untimely or unnatural death of any person, to "summon a jury of twelve discreete men" to inquire into the cause and manner of the death; to give warning unto the inhabitants of their town of husbands living apart from their wives; not to refuse the office of a Constable being orderly chosen thereto under penalty† of five pounds, and if in Boston, ten pounds; "in case of any servants running from theire master, or inhabitants going privily away, with suspition of the intention, in ye absence of a magistrate, the connstable and two of the cheife inhabitants is to presse men, boates and pinnaces, at the publique charge, to pursue such persons by sea or land, & bring them

* Deboist, perhaps from the past participle of "debosh," an old English corruption of debauch, to be found in Beaumont and Fletcher.

† In Old England penalties were everywhere in vogue for refusing local offices. Lambard gives abundant examples. It was regarded as a duty for the best men in the Parish to serve in the office of Constable, and that by a system of rotation, not indeed for the sake of spoil, but in order that the burden of the office might be shared by all. We have as yet found no English precedent for the town policy of Ashby, Mass., which from 1811 to 1835, sold the office of Constable to the highest bidder. See Drake, S. A., Hist. of Middlesex County, i. 225. And yet military offices used to be sold in England.

backe by force of armes;" to inform the Court of all new comers who settle themselves without license.*

This remarkable list of duties, which we have given in the very language of the original laws, comprises, together with the control of Highways and Bridges, the chief substance of constabulary duty in early New England. By comparing this list with that given in the Humphrey manuscript-warrants of constabulary duty issued in Old England, it will be seen that the early English institution was reproduced in every essential detail.† The original object of Massachusetts in proclaiming its constabulary law was that "each connstable may vnderstand his duty." The object of the English warrants was to give the "Articles to be diligently enquired of—by the Petty Constable & Tithingmen in euery parish, town, & hamlet." This spirit is very different from the degenerate conception of Constables entertained by Blackstone, who says of constabulary power, "considering what manner of men are for the most part put into these offices, it is perhaps well that they are generally kept in ignorance." Our Forefathers in England and New England made their best men Constables and Captains of Militia, and clothed both offices with dignity and honor. Historically the one office is as honorable as the other, for Constables and Commanders of the Militia were in ancient times one and the same. Militia Captains represent more fully perhaps the survival of the original constabulary spirit, the idea of armed force, which is the foundation and defence of all civil institutions.

But Constables, in their civil capacity, are also cases of historic survival. Every one of the powers enumerated above, however ignorant the modern Petty Constable may be of their full significance, links the communal life of to-day to its Old English beginnings. Every item of constabulary duty is an assertion of a fundamental principle in civil society, the sovereignty of the community, of the *salus publica*, over the individual. The Constable represents the organized force of the State or Commonwealth. The

* Mass. Col. Records, iv. Part 1., 324–27. Cf. ii. 150–1. See also Laws of the Colony and Province of Massachusetts Bay (1814), 82–84, and the recent edition of the Acts and Resolves of the Province of Massachusetts Bay, under "Constables." Public Statutes of Massachusetts (1882), "Constable." We have examined the Colonial Records of Connecticut, the New Haven Colonial Records, and the Records of the Colony of Rhode Island and Providence Plantations, as well as those of Plymouth Colony, but have no where found so complete an exhibition of constabulary duty as that given in the first citation of the Col. Records of Massachusetts. In the last edition of the Public Statutes of the Commonwealth of Massachusetts (1882) may be found certain cases of survival, such as the power of requiring aid in cases of escape (217, 239), and the duty of enforcing the law against Sabbath-breaking and profane swearing.

† For other means of comparison between constabulary duty in New England and Old England, see Lambard's "Duties of Constables," and Wilcox's "Office of Constable, comprising the laws relating to High, Petty and Special Constables, Headboroughs, Tithingmen, Borsholders and Watchmen, with an account of their institutions and appointment." This is an English book, based upon Lambard and published about 1827, republished in Philadelphia, in 1840, by John S. Littell, in the so-called "Law Library." There are some interesting remarks upon Constables in *The Nineteenth Century*, Feb. 1881, by Henry A. Blake, on "The Irish Police." He says, "Everything in Ireland, from the muzzling of a dog to the suppression of a rebellion, is done by the Irish constabulary."

entire strength of the People, the whole weight of the Common Law, the accumulated force of civic experience and institutional history, may be brought to bear in the restraint of violence and in the keeping of the public peace by constabulary power. Consider what was represented by the "black staffe" which the Constables of early New England carried in the execution of their office, that none might plead ignorance. It was a black staff, "about five foote, or five & a halfe foote long, tiped at ye upper end, about five or six inches, with brasse."* This Tipstaffe was something like the Black Rod still borne by the Gentleman Usher of the English Parliament, when he taps at the door of the House of Commons and summons them to the bar of the House of Lords. The black staff of the New England Constable was "provided by ye towne" as a symbol or badge of office. We find mention of the Black Staff in the Town Records of Salem and Groton.† What did this emblem signify historically? It meant the approach of royal authority or of the sovereignty of the Commonwealth. Among the East Saxons it was customary, once a year, to carry the Wardstaff of the King, which represented his person, from Hundred to Hundred, from Manor to Manor, and from Parish to Parish, as a token of the entrance of the King's peace. Wherever the Staff came, borne by the Bailiff of Ongar Hundred, tenants and land-owners kept watch with the sacred emblem over night "until the sunne arrising," so that "the King be harmless and the countree scatheless." In the morning the Lord of the Town or Manor repaired to the Wardstaff, and, in the presence of all the Watch, scored thereon a notch as a token of loyal service done that year. Then the Staff was delivered again to the Bailiff and sent on to the Lord of the next Town or Manor, with a message in verse called the "Tale of the Wardstaffe," ending with these words:

"Sir, by leave, take this Staffe,
This is the Tale of the Wardstaffe."

And thus through all the Towns and Hundreds of Essex, the willow staff was borne until it came to Atte Wode, where it was thrown into the sea.‡ With some such ceremony perhaps the Constable's Tipstaffe was early associated as symbolizing the presence of the King. Possibly the local keepers of the King's peace simply touched the Wardstaff with their own staves, thus deriving a certain measure of royal authority. It was certainly the custom in the Hundreds or Wapentakes of the North of England for the chief men of the district to recognize the authority of the Hundredman by touching

* Mass. Records, ii. 151; iv. Part I. 325. Constables "acting from their oune authority" were required by law to take with them their black staves in the execution of their office; but when armed with a warrant, they might carry their Tipstaffe or not, as they pleased, see v. 29. Items concerning the use of this ancient emblem may also be found in the Acts and Resolves of the Province of Massachusetts Bay, e. g. i. 155.

† Salem Town Records (Historical Collections of Essex Institute, Second Series, vol. i. 147: "two blackstaues of sixe foot long or thereabout be provided for ye Constables, & Ed: Batter to speak to ffran: Perry to haue them made." S. A. Green, Early Records of Groton, 19: Item "toe black staffe —— 0 3 6."

‡ Palgrave, English Commonwealth, ii. clviii.-clxii., "Tale of the Wardstaff."

his lance with their own weapons in a public assembly.* If we may believe Herbert Spencer, the idea of royal sceptres developed from the chieftain's spear, and "the spears borne by subordinates, symbolizing their deputed authority, gradually changed into staves of office, batons of command, and wands."† The Old English Tipstaffe was the legal badge of office for both Constables and Tithingmen in the Massachusetts Colony. In the Plymouth Towns every Constable was required by law to have "a constables staffe" to distinguish him in the discharge of his office, and to be delivered to his successor as a symbol of the transfer of power.‡ These Tipstaves have continued in use in many New England Towns down to a very recent date. We remember to have seen within a few years at Amherst College Commencements, held in the old Parish Meeting House, a force of special Constables employed to seat the "congregation," and bearing black staves as an emblem of their official authority. An æsthetic transformation of ancient custom may be seen at Smith College Commencements, Northampton, where young ladies acting as ushers carry tasteful wands, tipped, not with brass, but with ribbon, and where the only vestige of constabulary duty is a male professor, who stands on guard.

Perhaps the most remarkable feature of ancient constabulary power as perpetuated in New England down to the present day, is the power to "speede away all hues & crys"§ against thieves, robbers, murderers, and breakers of the public peace. This power connects New England Towns most intimately, not only with Old English Parishes but with Saxon Village Communities. In the early middle ages the Hue and Cry was a terrible means of executing justice. It let loose an entire village, like a pack of wolves, in pursuit of an out-

* Laws of Edward the Confessor, xxx. (Thorpe, Ancient Laws and Institutes of England, i. 455). Everwichescire, Nicholescire, Notingehamscire, Leicestrescire, Norhamtunescire, et usque ad Watlingestrete, et viii. milliaria ultra Watlingestrete, sub lege Anglorum. Et quod alii vocant hundredum, supradicti comitatus vocant wapentagium, et hoc non sine causa: cum enim aliquis accipiebat prefecturam wapentagii, die constituto, conveniebant omnes majores contra eum in loco ubi soliti erant congregari, et, descendente eo de equo suo, omnes assurgebant contra eum, et ipse erigebat lanceam suam in altum, et omnes de lanceis suis tangebant hastam ejus, et sic confirmabant se sibi. Et de armis, quia arma vocant wappa, et taccare, quod est confirmare.

† Herbert Spencer, Ceremonial Institutions, 177. In Hazlitt's edition of Blount's Tenures of Land and Customs of Manors, p. 80, is a very curious allusion to the Tithingman's wand. "The Tithingman of Combe Keynes is obliged to do suit at Winfrith-court; and after repeating the following incoherent lines, pays threepence, and goes out without saying another word:

With my white rod,
And I am a fourth post,
That threepence makes three,
God bless the King and the lord of the franchise;
Our weights and our measures are lawful and true,
Good-morrow, Mr. Steward; I have no more to say to you.

On default of any of these particulars the court leet of Combe is forfeited."

‡ Plymouth Colony Records, Laws, 122; Brigham's edition of Plymouth Laws (1836), 266. "Every Constable shall have a Black Staffe tipped with Brasse, as a Badge of his office, which as he hath opportunity, he shall take with him when he goeth to discharge any part of his office, yet notwithstanding, the want of his staffe shall not hinder him from executing his office in any kinde, if occasionally he be without it, nor exempt any from assisting him therein that may know him to be the Constable."

§ Mass. Col. Records, iv. Part I. 324.

law or fugitive. Every man called upon by the Reeve or Tithingman was obliged to leave work or repose and join the human hunt. When the Hue and Cry reached the next village, the head man of that place was obliged by the law of the Saxons to summon his villagers and *speed away*. The whole Hundred and the whole Shire were thus quickly aroused, and woe then to the wretched outlaw. The country was filled with human hounds thirsting for his blood. It is fearfully significant of the immense power invested in the early New England Constable that he too could raise the old Saxon Hue and Cry, "by foote, & if need be, by horse,"* in hot pursuit of all capital offenders. In the King's name the Constable could raise the Town and compel all men to join him in the pursuit of a criminal. Not even the Selectmen could refuse his call for aid, under penalty of the law.† And to this day the Petty Constables of New England have the same old power. Should it become necessary, the lowly officer of any obscure hamlet could assert, like the High Sheriff‡ of a County, the authority of the Commonwealth and command all the men in his neighborhood to join him in the preservation of the peace. Petty Constables have the power of the State behind them, and rely upon it. We have seen a crowd of men called upon by a Parish Constable to aid him in arrest. The familiar cry of "Stop Thief!" if raised by a Petty Constable, converts all persons who hear it into a constabulary band, or regular Hue and Cry to chase the offender. With a warrant issued in due form, a Petty Constable may pursue a criminal by foot or by horse, by railroad or telegraph, from Town to Town, from County to County, and may "apprehend him in any place in the Commonwealth."§

In these modern times of civic order and well-regulated peace, the iron hand of Law is seldom laid with its full force upon a transgressor. Constables occasionally serve a writ, or arrest a vagabond "overtaken with drincke," but the chief duty of their office now appears to be that of attending to their own private concerns and ignoring the pranks of small boys. The Constable may be a quiet, unobtrusive man, but he still represents the majesty of Law. There is latent power in the constabulary office, as in all our homely local institutions. The authority of the Townsmen sometimes sleeps, but it is a lion sleeping before the gate of a citadel. The young lions of liberty play fearlessly within the reach of Law, and still the lion sleeps. But let an enemy approach from without, or a traitor come forth from within. Behold, a lion stands in the way. There is a lion in the street.

* Mass. Col. Records, ii. 182. † Ibid, ii. 150.
‡ Public Statutes of Mass. (1882), 217, 239.
§ Herrick, Town Officer (1870), 144. Public Statutes of Mass. (1882), 239.

Addendum.

Hog-Reeves or Hog-Constables.

In many old Towns in New England, for example in the ancient Town of Plymouth, there is a surviving type of a local officer, which is more primitive than the office of Tithingman or Petty Constable. Before there were keepers of the village-peace in the Saxon sense, there were keepers of swine which roamed tribal domains. Before nomad chieftains had stables and hostlers, they had their flocks and herds and droves of swine, all with appointed herdsmen. Although doubtless every chief had his servants trained for tribal defence, as did Abraham his three hundred and eighteen men,* yet pastoral institutions, like the herdsmen of Gerar who strove with Isaac's herdsmen,† carry us back to a more rudimentary stage of society than a numerically organized martial Host, like the Hundreds and Tithings of the Saxons when they occupied Britain. In fact the invading Saxons brought with them, in all probability, ideas of older institutions than Hundredmen and Tithingmen, in short primitive, more or less servile institutions, inherited by their ancestors from the high pasture-lands of Asia, and connecting our Aryan race with all pastoral peoples, if not with primitive savagery. Among those institutions was that one of which Scott has given us a graphic description in the person of Gurth,‡ the Saxon Swine-Herd, who in the upland pastures of the West Riding of Yorkshire represented not merely the survival of primitive Saxon speech, but the survival of a primitive pastoral office. In fact Scott calls him a second Eumæus, who was the Swine-Herd of Odysseus. In Saxon England Swine-Herds were a very necessary institution. Swine were so numerous in the days of King Edgar that he was obliged to proclaim a law to the effect that no animal of this species should be allowed to enter Church if it could possibly be hindered.§ Hog-Reeves and Dog-Whippers were stationed at cathedral doors in time of service to prevent profane intrusion. The function of dog-whipping was handed on to New England Tithingmen and Constables, who sat at the doors of the Meeting-House to keep out dogs and keep in boys. Hogreeves were almost everywhere instituted in our early Towns.

In New England the very first liberties specifically granted to Towns were concerning the herding of cattle and swine, and the regulation of fences and common fields. In the colonial records of

* Genesis, xiv. 14. † Ibid, xxvi. 20; cf. xiii. 7.

‡ Scott, Ivanhoe, chap. i. "One part of his dress . . . was a brass ring resembling a dog's collar—soldered fast around his neck, so loose as to form no impediment to his breathing, yet so tight as to be incapable of being removed, excepting by the use of the file. On this singular gorget was engraved in Saxon characters, an inscription of the following purport: 'Gurth, the son of Beowulph, is the born thrall of Cedric of Rotherwood.'" Rotherwood is an old name designating a place for Rother-beasts (from the Saxon hrudher, mod. Ger. Rind). The term was usually applied to cows and oxen. Rother-beasts are mentioned in the 3 and 4 Edward VI. Rother-beasts were brought over to New England, see White's Planter's Plea, in Young's Chronicles of Massachusetts.

§ Thorpe, Ancient Laws and Institutes of England, ii. 251.

Massachusetts we find resolutions like the following: "Euery towne shall haue liberty to make such orders aboute swine as they shall judge best for themselues."* Towns were ordered to choose yearly "some one discreet person, who shalbee called the hogreeve,"† who had power to seize all "wild swine," going without a keeper, without yoke or tethering line, or some means of restraint. Swine were often allowed to run at large if properly yoked or ringed.‡ It is rather surprising to one familiar with the open lawns and beautiful streets of Stockbridge, the model town of Berkshire, to find in its original Town Records repeated entries like the following: "Voted, that the hoggs be yoked and run at large by the 15th of April next."§ In Stockbridge the Hogreeves, as indeed all Town Officers, with the exception of Moderator and Town Clerk, were originally Indians. The Town Records are full of strange, uncouth Indian names, which appear all the stranger from their combination with Old Testament or Christian names; for example, Jehoiakim Nau-naum-pe-tonk, Constable; David Nau-nau-nee-ke-nuk, Tithingman; Jacob Naunauqhtaunk, Hogreeve; Solomon Waunaupaugus, Peter Popgunaupeet, and John Konkapot, Selectmen. We find "hog constibls and fens uewers" in the Early Records of Groton, recently edited by Dr. Samuel A. Green with careful reference to historical orthography. The variety of ways in which Groton Town-Clerks contrived to spell‖ the same office is marvellous to behold. Evidently, like General Jackson, they despised a man who could spell a word in only one way.

The election of Hogreeves is still kept up in many old New England Towns. The conferment of that office at the annual Town-Meeting is now regarded as a kind of municipal joke. Almost invariably the honor is given to persons who are least likely to appreciate it, for example to newly married men. In the town of Plymouth a rising young lawyer and a Harvard graduate, soon after his marriage, was dignified by his fellow townsmen with the venerable office of Hogreeve. In a Western Massachusetts Town we have heard of a popular minister who was elected Hogreeve by the unanimous vote of his parishioners. He retaliated in a little speech, saying that he had always supposed that he had been invited to that town as a shepherd of the sheep, but he was now surprised to learn that it was really as keeper of quite a different sort of animals.

* Mass. Records, i. 119; cf. i. 110, 86, 87; Plymouth Col. Records, Laws, 15, 25, 27, 32.
† Mass. Records, i. 182. In Groton, Mass., there were Swine-Herds and Overseers of the Swine. See Green, Early Records, 114, 115, "Swinerd."
‡ Green, Early Records of Groton, 48, 108; Town Records of Salem, 64, 68, 85, 130, 143, 152.
§ MS. Town Records of Stockbridge, March 15, 1748.
‖ Green, Early Records of Groton, 88; cf. 90, "Constibll;" 98, "Constabelle;" 99, "cunstabell;" 108, "fenc fuer;" 115, "fence neers," 116, "fenc uewer."

Documents defining the Duties of Constables.

18 Somerset Street, Boston, Mass.,
Sept. 15, 1881.

H. B. Adams, Esq.,

Dear Sir: Jonas Humfrey,* of Dorchester, the ancestor of the family (Humphrey or Humphreys) in that town, arrived in "1637," on "the 9th of September."† The next day, as appears by the Dorchester Town Records, he bought the house, home lot, and other lands of William Hannum.‡ This home lot has been in possession of the family to the present time, and is now owned and occupied by Deacon Henry Humphreys, of the seventh generation in descent from Jonas,§ who was, according to tradition, a constable in Wendover, co. Bucks, England, before coming to this country. Tradition further states that he brought with him two original papers in which the duties of a constable are set forth very explicitly, in twelve articles. The first document sent you with this, I carefully copied from one of those papers. The second was transcribed from a manuscript copy. The original of the latter I saw and made a fac-simile of more than thirty years ago. I am sorry to say that both the original and the fac-simile are now missing. Yours truly,

William B. Trask.

To the Constables of Wendouer Burrough cum fforence‖ and to eu'y of them

These are in his Ma^{ts}: name to will & require yo^{w} to giue notice of these Articles hereunto annexed to the Church wardens & ou'seers of y^{e} poore of yo^{r} pish and that both you and the said Church wardens & ou'seers doe bringe vnto his Ma^{ts}: Justices at the Red Lyon in Wendouer on Wednesday the 27th. of this Instant Moneth of June by Eight of the Clock in the forenoone their Presentm^{ts}: according to each Articles as they shall belonge to their seu'all offices And farther that Yo^{w}: doe certifye to his Ma^{ts} Justices exactly w^{t}: Alehouses are licensed and W^{t}: vnlicensed wthin yo^{r} lib'ties Strictly enioyning all the said Alehouse keepers licensed and vnlicensed not to fayle to be before his Ma^{ts}: Justices at the same tyme and that wth the aduice of the minister & some three o^{r} fower of the most Substantiall Inhabitants yo^{w} doe certifye vnto them what number of Alehouses are fit to be licensed in you^{r} pish and what psons are fittest to keepe them and alsoe that you certifye to them what psons there are that doe vsually vent & sell Tobacco by retayle in yo^{r} towne & of their fitnesse soe to doe, together wth the names of such othe^{r} psons as you shall thinke fitt to be admitted to vse that trade together with the trade w^{ch} they now vse And farther that you keepe a diligent and strict Warde by daye & Wacth by night and that you doe vpon Tewsdaye the 26th of this Instant June take

* See History of Dorchester, 101, 124.

† Manuscript of the late Deacon James Humphreys, who died in Dorchester, July 13, 1845, aged 92 years.

‡ See Fourth Report of the Record Commissioners, Boston, 1880, page 24.

§ *Clapp Memorial*, xvii., 274, 275.

‖ "The parish of Wendover includes the Borough and the Forrens, the latter being that portion, within the limits of the township, which was not entitled to burgage privileges." *Ibid*, xvii.

w^th^ you sufficient ayde and make a priuate & dilygent search w^th^in yo^r^ libertyes fo^r^ Rogues vagabonds and idle persons & that yo^w^ bringe before his Ma^tie^: Justices to the place aforesaid on the sayd 27^th^ day of June all such of them as shall seeme sturdye dangerous and incorrigible and that yo^w^: doe punish & send away accordinge to law all such as are not dangerous & incorrigible and that yo^w^: be then & there p^r^sent to giue a strict accompt of the due execution hereof fayle not dated this 20^th^ day of June 1632:

ffrom S^t^ Leonards p me W^m^ GRAUNGE

You and the Church wardens remember to pay the q'teridge fo^r^ the kings bench Marshalseys and mayned souldyers to me on the Day abouesayd at yo^r^ towne.

Warrant—Bucks.—

Articles to be diligently enquired of and distinctly & particulary answered unto in writing by the high Constables within every hundred, and by the petty Constables & Tithing men in euery parish, town & hamlet, at the assises to be holden for the Countye of Bucks.

1. You shall enquire of and truely report the name of all Popish recusants in your parish who do forbeare to repaire to the Church according to the law. The names of men & women or dame of the familye, The names of the servants by their surnames & names of baptisms, the names of all Schollmasters And you shall certifye the names of all such persons, as } Who do not ordinarily resort to the Church make or resort unto any pryvate Conventicles, or meetings, under colour of exercise of religion.

2. You shall present the names of all such, as doe not resort to devine service every sunday according to the law, & Certifye, whether the 12^d^ forfeyted be required & received and duely imployed for the poore; of whom it hath been levied & of whom neglected.

3. You shall certifye, what felonyes have been comited within your towne & parish, which have come to your knowledge; against whome, of what kind & nature, & who hath prosecuted the same; & if any robberyes since the assises last past have been committed, you certifie whether hue and cry have been made, and the same have been duely pursued by horsemen & footmen, or in whose default, or by whose negligence the same hath fayled to be duely pursued, & also whether watches have been duely kept for the apprehension of fellions or vagrants, or by whose default the same have been neglected.

4. You shall Certifye, what vagrant persons have been apprehended within your parish since the tyme aforesaid, and what lett pass not apprehended, or not punished; who have been sent to the house of correction, when & how they have been delivered from thence; & by whose negligence same hath happened, & who have relieved such vagrants with meat, drink, or lodging.

5. You shall enquire & certifye what cottages erected, by whom, & by whose meanes contrary to the statute of 3^d^ Eliz. & what inmates intertayned, & by whom.

6. You shall certifye how many tavernes, innes, alehouses, & typling houses their are in the parish, who keep the same, how long they have kept them, & which of these alehouses are licensed, and which not, & in what

places their houses stand, & whether they sell ale or beere according to the assise or not; which of these innes intertayne neighbours as alehouses; who hath been drunk within the parish since the last assise, & in what inne or alehouse, the same hath hapned, & who have mayntayned any unlawful games their.

7. You shall enquire who are or have been since the tyme aforesaid ingrossers, forestallers, regrators, of corn within said county, or any other county, who dwell or reside within your precinct, what kind of corne or grain & of what quantitye they have been ingrossers, & forestallers, or regrators; & who are maltsters within your parish to sell there mault againe, & who use brew houses for ale or beere within your parish, & who of them sell to any unlicensed alehouse.

8. You shall certifie the names of all the petty Constables in your towne & parish, & their abilyties, & by whom they have been made, nominated, or chosen to the end that men of abilytie & good discretion maybe chosen to these places.

9. You shall enquire, & certifye, what servants have been put out of service, or have put themselves out of service, & their termes not expired, where this hath hapned, & what is become of such servants; & what unmarried persons of able bodye live out of service, whether they have meanes to live without labor; if they doe labor, who sett them on worke.

10. You shall enquire what bridges, or highwayes are in decay in your parish, & through whose default the same hath hapned.

11. You shall enquire and certifie what causes are provided in your parish for setting the poore on worke, or how or by what meanes the poore are sett on worke in your parish; & what apprentices have been placed, or bound forth in your parish, & who refused to receive & keep any apprentice soe offered to be put forth by the Justices of peace; what bastard hath been born within your parish, who the mother, who the reputed father, how they have been punished, & how the bastard provided for.

12. You shall enquire & certifie what ryotts have beene committed in your parish, within the time aforesayd, by whome, when & how the same hath beene punished.

High Constable of the hundred shall call the petty constables before him, a weeke before the Assises, & receive their answers in writing, to every one of these 12 articles.

And, the High Constable & every of the petty Constables shall affirme the truth of their Certificates upon their Oath, on or before the Assises, before one of the Justices of the peace, a week before the assises or at the monthly meetings of the Justices of that division.

You are to returne answer
in writing to euery of
these 12 articles to me
at Wendouer the 27th
of June alsoe.

Jo. Heath
Fr. Haynes

LAW BOOKS,

PUBLISHED BY

CUSHINGS & BAILEY,

BALTIMORE, MD.

ALEXANDER'S BRITISH STATUTES IN FORCE IN MARYLAND. 1 vol. 8vo. $10 00

BARROLL'S MARYLAND CHANCERY PRACTICE. 1 vol. 8vo. 3 00

BLAND'S " " REPORTS. 3 vols. 8vo. 15 00

BUMP'S FEDERAL PROCEDURE. 1 vol. 8vo. 6 50

" FRAUDULENT CONVEYANCES. Third Edition. 1 vol. 8vo. 6 50

EVANS' MARYLAND COMMON LAW PRACTICE. 1 vol. 8vo. 4 00

HINKLEY & MAYER ON LAW OF ATTACHMENT IN MARYLAND. 1 vol. 8vo. 3 00

MARYLAND REPORTS. 100 VOLS. 8VO.

" DIGEST, BY NORRIS, BROWN & BRUNE. Comprising Harris & McHenry, 4 vols. Harris & Johnson, 7 vols. Harris & Gill, 2 vols. Gill & Johnson, 12 vols. Bland's Chancery, 3 vols. ..... } 10 00

" DIGEST, BY STOCKETT, MERRICK & MILLER. Comprising Gill, 9 vols. Maryland, 1—8 inc. Johnson's Chancery, 4 vols. ..... } 10 00

" DIGEST BY COHEN & LEE. Comprising 9—20 inc. Maryland ..... } 10 00

" DIGEST, BY BURGWYN. Comprising 21 to 45 inc. Maryland ..... } 10 00

POE'S PLEADINGS AND PRACTICE. 2 vols.

Vol. 1, Pleading 8 00

" 2, Practice 7 00

GROUND RENTS IN MARYLAND. Ready in July. By LEWIS MAYER, ESQ., of the Baltimore Bar.

This work will be an exhaustive treatise upon the subject of Maryland Land Tenure, which is of peculiar interest to students of institutional history. The work will also contain a reprint of Mr. Johnson's paper on "Old Maryland Manors," Study VII. in the University Series.

MARYLAND REPORTS. 58 Vols. 1851 to 1882. Per vol. 5 00

A few *complete* sets of Maryland Reports on hand at present, comprising:

Harris & McHenry's Reports.	4	vols.
Harris & Johnson's "	7	"
Harris & Gill's "	2	"
Gill & Johnson's "	12	"
Gill's "	9	"
Maryland "	58	"
Bland's Chancery "	3	"
Johnson's Chancery "	4	"
	99	vols.

For sale cheap.

They also keep a large and complete stock of Law, Classical, Medical and Miscellaneous Publications, which they offer for sale at low prices.

Agents for Sale of the Publications of the Johns Hopkins University.

XUM

ESTABLISHED 1837.

JOHN MURPHY & CO.

PUBLISHERS, PRINTERS AND BOOKSELLERS.

NEW PUBLICATIONS AND ANNOUNCEMENTS.

AN OUTLINE OF IRISH HISTORY, From the Earliest Times to the Present Day. By JUSTIN H. MCCARTHY. 1 Volume, 12o., cloth, price..... $ 0 75

To those who wish to be intelligently informed in regard to Ireland's past and present history, and the cause of her existing troubles, this little volume, written in a concise and entertaining style, will prove invaluable.

ADELAIDE A. PROCTOR'S POEMS. Complete. With an introduction by CHARLES DICKENS. 1 volume, 12o, cloth, full gilt... 0 75

PATIRA. A Novel, from the French of Raoul de Navery. 1 vol., 12o., cloth..... 1 25

CONSTITUTION OF THE UNITED STATES OF AMERICA. By WILLIAM HICKEY. New edition, revised and enlarged. In one elegant volume of 700 pages, 12o. Containing two fine Mezzotint Engravings by SARTAIN. Price, mailed..... 2 50

THE REVISED CODE OF THE PUBLIC GENERAL LAWS OF THE STATE OF MARYLAND, with the Constitution of the State. Compiled by LEWIS MAYER, LOUIS C. FISCHER, and E. J. D. CROSS. Legalized by the General Assembly of 1878. Approved by the General Assembly of 1880. 1100 pages, Royal 8vo., law sheep, price..... 10 00
Interleaved..... 12 00

THE TESTAMENTARY LAW, and the Law of Inheritance and Apprentices in Maryland. By EDWARD OTIS HINKLEY, of the Baltimore Bar. 1 volume, 784 pages..... 8 00

A DIGEST OF THE LAW OF HUSBAND AND WIFE, as Established in Maryland. By DAVID STEWART and FRANCIS K. CAREY, of the Baltimore Bar. 1 vol., 12o., leatherette..... 3 00

SYLLABUS OF THE LECTURES DELIVERED BY JOHN A. INGLIS, LL. D., Professor of Commercial Law, Equity, &c., School of Law, University of Maryland. Junior and Senior Course. 4to., paper..... 2 00

THE NEW JURY LAW IN FORCE IN BALTIMORE CITY. Square 16mo., paper..... 25

MARYLAND REPORTS. Vols. 57 and 58., 8vo., law sheep, per vol. 5 00

THE LAWS OF MARYLAND. January Session, 1882. 8vo., sheep, 5 00

IN PRESS, PREPARING FOR EARLY ISSUE.

THE LAW OF HEREDITY; A Study of the Cause of Variation and the Origin of Living Organisms. By W. K. BROOKS, of the Johns Hopkins University.

INDEX TO THE MARYLAND REPORTS AND DIGESTS. By J. T. RINGGOLD, of the Maryland Bar. 1 volume, 8vo., sheep.. 10 00

Any work published in this country will be mailed to any address on receipt of price.

Address, **JOHN MURPHY & CO., Publishers,**
BALTIMORE, MD.

IV. **Saxon Tithingmen in America.** Read before the American Antiquarian Society, October 21, 1881. By H. B. ADAMS. (Now ready. Price 25 cents.)

V. **Local Government in Michigan, and the Northwest.** Read before the Social Science Association, at Saratoga, September 7, 1882. By E. W. BEMIS, A. B. Amherst College, 1880. (Now ready. Price 25 cents.)

VI. **Parish Institutions of Maryland.** With Illustrations from Parish Records. Published in abridged form in the Magazine of American History, April, 1883. By EDWARD INGLE, A. B. Johns Hopkins University, 1882. (Now ready. Price 40 cents.)

VII. **Old Maryland Manors.** Read before the Historical and Political Science Association, March 30, 1883. To appear in a book on "Ground Rents in Maryland," edited by Lewis Mayer, Esq., published by Cushings & Bailey, Baltimore. By JOHN JOHNSON, A. B. Johns Hopkins University, 1881. (Now ready. Price 30 cents.)

VIII. **Norman Constables in America.** Read before the New England Historic, Genealogical Society, February 1, 1882. By H. B. ADAMS. (Now ready.)

Village Communities in America—Cape Anne and Salem Plantations. Read in part at a Field Meeting of the Essex Institute, August, 31, 1881. By H. B. ADAMS.

Origin and Development of the Municipal Government of New York City. I. The Dutch Period. II. The English Period. Published in the Magazine of American History, May and September, 1882. By J. F. JAMESON, Ph. D. Johns Hopkins University, 1882; Assistant in History, Johns Hopkins University.

Administration of Berlin compared with that of New York. Two articles in *The Nation*, March 23, 30, 1882. To be revised and enlarged for this series. By R. T. ELY, Ph. D. Heidelberg, 1879; Associate Professor of Political Economy, Johns Hopkins University.

French and English Institutions in Wisconsin. By W. F. ALLEN, A. M. Harvard, 1866; Professor of History and Latin, University of Wisconsin.

Civil Government in Iowa. By JESSE MACY, A. B. Iowa College, 1869; Professor of Historical and Political Science, Iowa College.

Indian, French, and English Towns in Ohio. By JOHN T. SHORT, Ph. D. Leipzig, 1880; Professor of History, Ohio State University.

Old and New Towns of Maryland. Read before the Maryland Historical Society, December 11, 1882. By LEWIS W. WILHELM, A. B. Johns Hopkins University, 1880; Graduate Scholar in History.

The Institutions of North Carolina. Read before the Hist. and Polit. Science Association. Abstract in Johns Hopkins University Circular, May, 1882. By HENRY E. SHEPHERD, University of Virginia, late Superintendent of Public Instruction, Baltimore, now President of the College of Charleston, S. C.

Local Self Government in South Carolina,—the Parish, the District, and the County. Read before the South Carolina Historical Society, December 15, 1882. With other papers on Free Schools, Markets, Fairs, Militia, &c. Abstracts in Johns Hopkins University Circulars, February, May, 1882. By B. J. RAMAGE, A. B., Newberry College, 1880. Graduate Scholar in History, J. H. U.